



**THE HISTORICAL DEVELOPMENT OF THE
SOUTH AFRICAN LAND ISSUE
1652-2013**

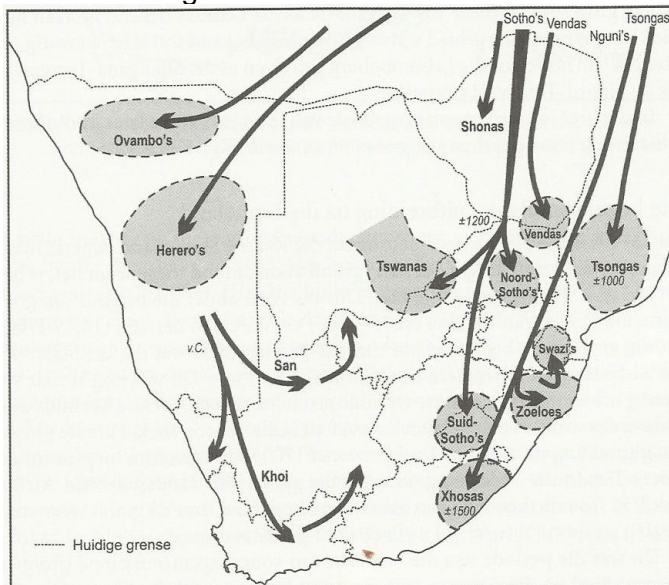
A Factual Analysis

A Discussion Document of the Afrikanerbond

THE HISTORICAL DEVELOPMENT OF THE SOUTH AFRICAN LAND ISSUE 1652-2013¹

If you tell a big lie and keep repeating it, people will eventually believe it ... Three of SA's big lies are that "land reform" means redistributing white farms; that "willing buyer, willing seller" redistribution has failed, and that people who support that principle oppose the restitution of land misappropriated under apartheid.²

The authors state that the current debate about land reform makes no sense unless it takes into account the historical course of land distribution in South Africa. After studying land ownership in South Africa, they come to the conclusion that land ownership and the separation between the two main population groups were largely inevitable. Throughout the world, people from different racial backgrounds show a tendency to avoid mixing with one another – especially where their living space is concerned. It is simply more comfortable and convenient to associate with people from the same background – people who speak the same language, practise the same religion, therefore generally people of the same culture. These preferences need not be discriminatory. The term segregation (separate but equal) comes from the USA where the editor of the influential *Atlanta Constitution*, Henry Grady, advocated segregation in the last decade of the 19th century. In South Africa the segregation of the various ethnic groups could not really be prevented and to a large extent, occurred spontaneously.³ Opinions differ about who first set foot on the southern subcontinent and in particular about when precisely the Black nations migrated to the region known today as South Africa. Yet there is sufficient evidence that the Blacks migrated southwards from central Africa, while the Whites migrated northwards.



Southward migration of Black nations.⁴

¹ . This article is based on the book, *Omstrede Land – Die Historiese Ontwikkeling van die Suid-Afrikaanse Grondvraagstuk, 1652-2011* published on 22 February 2012 by Protea Books in Pretoria. *Omstrede Land* consists of two parts, namely a historical overview and annexes containing various documents, reports and statutes. In this way the **authors**, Professor Louis Changuion and Bertus Steenkamp, endeavour to establish a historical base line for discussion.

² . Leon Louw, Executive Director of the Free Market Foundation. Internet.

³ . *Omstrede Land*, p.188.

⁴ . *Ibid.*, p.17.

It is accepted that when the Europeans landed here in the 17th century, there were no Black nations in the regions known today as the Western Cape, the Northern Cape and the North-West Cape, apart from the nomadic Koi, Nama and San groups. The nomadic groups, in Western opinion, had laid no claim to land at that stage. These three regions comprise about 40% of South Africa's land surface.

The Difaqane (wars of attrition in the 19th century) also played a significant role in scattering the population because parts of the country were unoccupied when the Voortrekkers arrived. A good example is the wars that Dingaan and Shaka waged against weaker tribes. The Voortrekker leader, Andries Pretorius, mentions in his memoirs that when the Voortrekkers crossed the Orange River, they found villages and/or regions that were devastated and strewn with the bones of the dead. That was why some of the weaker tribes had been "genoodzaak ... *hun kinderen te eeten*" (forced...to eat their children).⁵

The contact arising from the northward movement of the white Europeans and the southward movement of the Black tribes brought the cultural differences into strong relief. The Cape colonial government attempted, after various wars on the eastern frontier, to set boundaries by means of agreements. But this was in vain. Treaty after treaty had been entered into, and still the marauding and plundering continued, and the eastern frontier remained the weak link in the Colony's administration. More than 15 agreements had been signed in the period from 1834 to 1847, but in 1846 Sir Harry Smith took a piece of paper, tore it into shreds and solemnly declared: "There go the treaties ... No more treaties." Then he annexed the Queen Adelaide Province and declared it a British territory.⁶

The colonists, the British rulers and the Voortrekkers acquired land through:

- Negotiations with Black tribes and entering into treaties (including with Dingaan);
- Taking over and/or annexing territories by the British colonial governments;
- Occupation of unoccupied regions; and
- Lastly, land was acquired through conquest.

Once again, cultural differences come clearly to the fore here. At the time of these events (the concluding of treaties and conquests) the white colonists, with their European background and knowledge, regarded this as the valid acquisition of land. The colonial governments, as well as later republican governments, described their actions in legislation and title deeds, but the black ethnic groups left no documentary evidence. This is still one of the most serious differences today in handling the land issue.

A few historical milestones:

The Sand River Convention of 1852 established the Zuid-Afrikaanse Republiek and the Bloemfontein Convention of 1854, the Republic of the Orange Free State. One of the most important reasons for founding these two Boer republics was that the British had in fact given up hope of negotiating with and/or handling the Black tribes north of the Cape Colony. Both the republics determined and employed their own policies, while the colonial governments in the Cape and Natal followed their own course.

The Anglo-Boer War (ABW: 1899-1902) left the country in chaos. Large-scale poverty prevailed among Blacks and Whites in the former Boer republics, with the result that land reform was not a priority at all. The territorial separation that had already begun in the 19th

⁵ Ibid., Schedule C

⁶ . Ibid., p.45

century in the Eastern Cape and was then used in Natal, Transvaal and the Free State, continued. Moreover the establishment of British high commissioner territories or the protectorates of Basutoland, Swaziland and Bechuanaland gave recognition to the separation of own regions for Blacks.

In 1903 Lord Alfred Milner decided that something substantial had to be done about the distribution of land between Blacks and Whites. He appointed Sir Godfrey Lagden (Resident Commissioner in Basutoland) among other things to report on the occupation of land by the Blacks. The Lagden Report 1903-1905 is still regarded today as one of the most important documents in respect of land reform in SA. It was the first attempt to define land distribution, and especially the so-called reservations. Unfortunately nothing was done about his recommendations.

When the Union was declared in 1910, Black rights, including land distribution, were once again not addressed. But after the war the Blacks were just as impoverished as many white farmers and they became involved in sharecropping as squatters. This upset the farmers, especially those in the Free State, and they put pressure on Gen. Hertzog to regulate land ownership. This was the start of the infamous 1913 Act.

The first attempt of the Union government to address the rights of Blacks, including land rights, was the famous/infamous **Natives Land Act, Act 27 of 1913** which was signed into law on 16 June 1913 by the governor-general, Lord Gladstone. In this way, territorial segregation was captured in legislation for the first time after the Union.⁷ It was also the first legislation about territorial segregation that applied to the entire country. This Act, which was hastily rushed through parliament, was not new thinking because it had been based largely on the recommendations of the Lagden Commission (1903-1905) and Gen. Hertzog's standpoints.⁸

The preamble to the Act states that the purpose of this Act is to provide for the purchasing and leasing of land, as well as the regulation of ownership by Blacks and other persons. In fact, the Act had four goals:

Segregation. To establish the policy of segregation for South Africa as a whole.⁹ Section 1 provides that Blacks may not buy, lease or otherwise acquire land outside the listed Black territories. Similarly, the Whites were not permitted to buy, lease or otherwise acquire land inside the listed Black territories (later referred to as the *scheduled* territories).

Cape excluded. Secondly, the purpose of the Act was to exclude the Cape Colony from the provisions of the Act. Section 8(2) provides that nothing in the Act "shall be in force in the Province of the Cape of Good Hope ..."¹⁰ This principle was confirmed by an Appeal Court judgment (Thompson & Stilwell v. Kama).¹¹

Sharecropping. Thirdly, the Act restricted sharecropping, particularly in the Free State.¹² In reality the Act terminated all such agreements in the Free State, but the Department of

⁷ Ibid., Schedule Aj, p.406.

⁸ W.H. Beaumont, 1916. UG 25-16. *Natives Land Commission*. Government Printers, p.1

⁹ E.H. Brookes, 1927. *The history of Native Policy in South Africa from 1830 to the Present Day*. Van Schaik, Pretoria, pp.323, 335-336.

¹⁰ . Ibid.,p 336

¹¹ . Ibid.

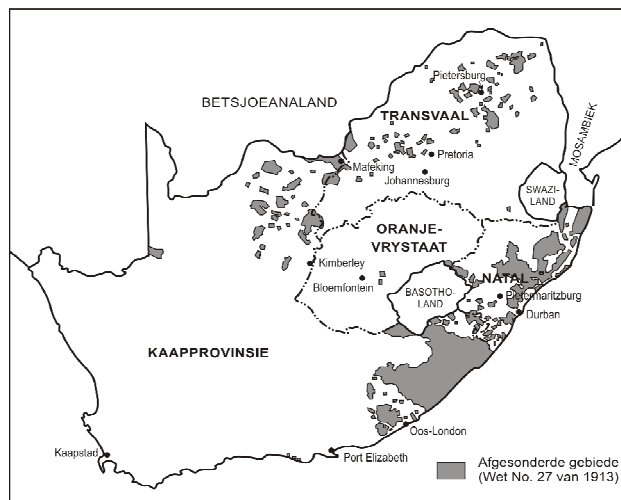
¹² . Ibid., p 337.

Native Affairs decided that existing agreements had to be complied with. No further agreements could be entered into, however. In the Transvaal the Blacks on farms were protected, but “once he left the farm on which he was registered when the Act came into force, the protection was gone”.

Identification of reservations. In a schedule to the Act, the Black territories (Native territories) were indicated, which included the existing Black territories and locations (reservations) existing at that stage. These territories, as amended by later legislation, later became known as separated or *scheduled* regions for Black people. These regions initially comprised only 7,3% of the total surface area of the Union of South Africa. With later additions, this increased to 8,3%. In reality, 10 546 320 morgen (9 033 250 ha)¹³ of land was defined in the four provinces – the so-called *scheduled territories*. This land would be recognised as inalienable Black land. Of this land, 6 255 980 morgen (5 358 441 ha) was in the Cape Province; 3 000 000 morgen (2 569 593 ha) in Natal; 1 215 850 morgen (1 041 413 ha) in the Transvaal and 74 290 morgen (63 631 ha) in the Free State. (See map below.)

It is important to note that this land was located where the respective Black ethnic groups were concentrated and already resided in large numbers. Particularly in the Transvaal, these were mainly the regions that had been set aside as reservations for the Black tribes under the old ZAR government in the previous century.

The 1913 Act¹⁴



In terms of the 1913 Act, the Black tribes could now run their own separate socioeconomic and political systems in these territories and the Whites could do so in the rest of South Africa. This Act can therefore be regarded as the first unitary measure that applied the principle of territorial separation in practice and obtained legislative recognition. And this is what the problems of today are about.

REACTION TO ACT 27 OF 1913

As could have been expected, the Whites and especially the Hertzogites were satisfied, but the Black residents were upset. The precursor to the present South African National Congress (ANC), the SA National Native Congress (SANNC) paid visits to the Minister of Native Affairs, the Governor-General of SA, Lord Gladstone, and the British parliament in

¹³ . WWW.saland.co.za/node/286. 1 ha = 1,1675 morgen; 1 acre = 0,4047 ha; 1 sq. mile = 259 ha.

¹⁴ Omstrede Land, p.135

London, but this was to no avail. Interestingly, Sol Plaatje did not object to the Act as such, but to the “harsh clauses of measures”.¹⁵

BEAUMONT REPORT

The Natives Land Act of 1913 provided for the establishment of a commission to report on the expansion of this Act regarding which regions should be reserved for White occupation and which for Black occupation. It was envisaged in the Act that the commission would have to report to parliament within two years, and that the report should give a full description of the relevant regions with clear boundaries. This task was entrusted to former judge Sir WH Beaumont to investigate “the delimitation of areas to be set aside for European and Native occupation”.¹⁶ Due to the outbreak of the First World War and the Rebellion, the commission could only meet on 15 August 1913, however, and the report was tabled in 1916.

Beaumont took his task as chairperson very seriously and though the instruction to the commission was largely limited to the identification of land for Black occupation, the commission did a great deal of research on the different standpoints around racial and land affairs. For that reason, Beaumont formulated his goal as “to bring to your notice those matters which appear to me of importance and which require to be borne in mind when determining the practical implications of the Act, and to suggest how far and in what manner the objects aimed by the Act may best be attained”.¹⁷

The Commission took as its point of departure the report of the Lagden Commission (*The Report of the South African Native Affairs Commission*) of 1903-1905. Beaumont regarded his report as a “supplement to the Report of the Natives Affairs Commission of 1903-5”.

ERRORS OF THE PAST

The Beaumont Commission consulted widely and firstly pointed out the errors of the past:

Segregation

- As stated in the Act, segregation was not a new principle. In fact it was being applied to a certain extent in all the provinces “though only partially achieved or deliberately departed from”.¹⁸
- Regions in the **Cape Colony** which were reserved for Black occupation, were regarded as Crown Lands “subject to forfeiture by rebellions and liable to alterations at the will of the legislature”. Laws were enforced at will and among other things, Blacks were permitted to buy land in so-called *White regions*, for example in the Elliott district.
- A similar situation prevailed in **Natal**. As long ago as in 1853 a commission recommended that Blacks who were not needed as labourers, should be settled in the Umzimkhulu region. This recommendation was not implemented, and in 1864 (Royal Letters Patent) more regions were identified for Black occupation. Squatting outside these regions was prohibited, but “this law was never enforced. Natives were allowed to purchase land when and where they pleased”.
- The **Orange Free State** was regarded as a White region. Thaba’Nchu and Witsieshoek had been annexed by the Republic of the Orange Free State, but were administered as Black regions. Sharecropping and squatting, which commonly occurred, were prohibited by Act 27 of 1913. These provisions, together with the

¹⁵ . S.T. Plaatje. Native Life in SA. Chapter 16, 4-7. Internet.

¹⁶ . UG 25/1916, par 4.

¹⁷ . Ibid.

¹⁸ . Ibid.

restriction on sharecropping and the policy that Blacks could not buy or lease land in the so-called White regions, led to deep misery and bitterness after the adoption of this Act.

- In the **Transvaal** there was no clarity and/or description of the regions earmarked for Blacks until 1881. The Pretoria Convention of 1881 gave Blacks the right to buy land in the name of an official or trust and in 1905 (*Transvaal Constitution Letters Patent*) an attempt was made to identify further regions for Black occupation. Squatting was restricted by a Transvaal law of 1895, “but as whole tribes were excluded from the defined areas and left on privately owned lands, it has not been found possible to strictly enforce the law”.¹⁹
- **Griqualand West** was annexed in 1871 by the Cape Colony and in 1877 approximately five farms (159 821 morgen – 136 891 ha) were reserved for Blacks. The land was not surveyed or protected by legislation – it simply became crown land, and “on several occasions the Natives, for various reasons, were deprived of their locations or removed to other localities”. By 1916 there was far less land available than had been earmarked initially in 1877. These removals took place under British rule.

Confusing concepts

- **Segregation.** The term segregation and especially the result that people wanted to achieve through it, was a huge headache for Beaumont. Was the intention of segregation “*complete or partial*” separation? Beaumont states his frustration clearly: “The impracticability of such an idea makes it difficult to understand how it came to be entertained. It probably owes its origin to the free use of the term segregation without any definite idea as to what is meant by the term.”²⁰
- **Native.** Added to this too was the confusion about the term “native”. Section 10 of the 1913 Act describes “native” as a member of the indigenous race of Africa. The question was where the term “coloured” left the legislator. In the Orange Free State the term “coloured” included the term “native”. In other provinces the term “native” was defined differently, and sometimes “coloured” and “Griqua” were included in the term “native” but at other times they were not. In Kokstad a delegation of the Griquas requested the Commission that for the purposes of the Act they should not be classified as “native”. Eventually the commission made the recommendation “not to include half-castes and Griquas as natives, for the purposes of the Act in connection with the ownership of land”.²¹

Reservations. Next the Commission gave its attention to the distribution of land in South Africa. In his discussion of the “Native Reserves”, Beaumont points out that the so-called Black regions/reservations are situated where the greatest concentration of Black tribes already resided. It should be borne in mind that the Lagden Commission of 1903-1905 did not even recommend communal ownership, with the idea that in the Transvaal, Natal and Zululand “no provision was made for some tribes or portions of tribes”. These groups, for which no provision was made, “were left on the lands they occupied”. Beaumont states that in Natal “the kraals and huts are scattered indiscriminately in every direction, and patches of land are hoed up for gardens as fancy dictates, fresh patches being made when the old ones give out”.²²

¹⁹ . Ibid.

²⁰ . Ibid.

²¹ . Ibid.

²² . Ibid.

The **uneconomic utilisation of land and overgrazing** exacerbated the problem of overstocking. Since a Black man regarded cattle as his wealth, there was no restriction on how many cattle a person in a reservation could keep. If his land became overgrazed, he simply moved further away or leased more pasture. "The result of this overstocking is to impoverish the land and to make it less capable of supporting stock, and when dry seasons come the stock die in thousands."²³ By 1916 the call for better and more land became louder and the Blacks streamed over the borders and settled on state and private land.

Land in the possession of mission stations. Beaumont made an interesting comment about the land belonging to mission stations. These regions, in blocks of 5 000 to 13 000 acres (2 023 ha – 5 261 ha), fell historically outside the reserved Black regions, "but they are practically native Reserves intended solely for the use and benefit of the Natives".²⁴ In Natal alone, the missionary societies owned a total of 144 192 acres (35 629 ha) of land. The mission stations concentrated on their principal task, namely religion, and gave little attention to training the occupants and developing the land. For this reason, the Cape Colony and Natal both promulgated Acts (Act 29 of 1903 and Act 49 of 1903 respectively) to improve the management of the land, but "little or nothing has been done".²⁵

State land. State land (crown land) was a particular problem for the Commission. Of the approximately 17,5 million morgen (14 989 293 ha) of State land, 8,5 million morgen (7 280 513 ha) had been earmarked for State use – such as for game reserves (28 257 sq. miles – 318 563 ha), government plantations and regions reserved for future development. About 9 million morgen (7 708 779 ha) had not been earmarked for any special goals and could be used for the expansion of reservations. The habitable parts of the so-called crown land (about 942 000 morgen – 906 852 ha) had already been occupied for generations by Black tribes, which regarded this land as their property. Government plantations lying inside reservations led to deep unhappiness because the Blacks wanted to utilise the plantations themselves for their economic benefit.

Black farms. Many Blacks did not accept the commission and the Act, however, and this gave rise to suspicion, mistrust and uncertainty. They feared that their existing rights would be limited or taken away from them. Many held the view that this Act was a breach of the promises that the Imperial (British) government had made to them, especially during the Anglo-Boer War. In the Free State the abolition of sharecropping was greeted with bitterness. In short, they regarded this Act as "unfair".

Notwithstanding the principle that property rights would not be granted to individual Blacks, Black people did own land in all four provinces – the so-called "Native-owned Lands". Even in the Free State, which was regarded as a White region, there were a number of farms in the Thaba'Nchu district that were in the possession of Black people. Beaumont found that about 1 000 000 morgen (856 531 ha) of land was registered in the names of Blacks, whether individually or in a tribal context. This emphasised the Black people's thirst for land, because more land was often bought than could be utilised economically. Furthermore the land was usually bought by means of huge mortgages and was often repossessed by the mortgagors owing to non-payment.

²³ . *ibid.*

²⁴ . *ibid.*

²⁵ . *ibid.*

Land in possession of the Whites. Most of the Whites felt that the land that had already been earmarked for reservations was sufficient and they were not prepared to make any more White land available. Then there was also a group of White farmers who were not willing to forfeit some of their Black labourers, and they supported the reservations only if they remained under State control, with an obligation on the Blacks to work on farms. Most of the Free State farmers supported this Act because it abolished sharecropping.²⁶ Beaumont divided the land in the possession of Whites into three groups, namely:

- land/farms occupied by Whites and cultivated with or without Black labourers;
- land which Black people leased from Whites and cultivated. Here, too, squatting arose; and
- unoccupied White land.

Most of the Whites ensured labour for themselves by allowing Blacks to reside on their land and to provide labour in exchange for such residence. The number of Black families was limited by legislation, but this was not strictly enforced. Much of the land had been occupied for many generations by Black people, but they now had to pay rental on it. Due to the presence of the graves of their forefathers, they were so attached to this land that “they would rather submit to any terms than be forced to leave”.²⁷

Recommendations of the Beaumont Commission

The Commission recommended that urgent attention should be given to the consolidation and/or extension of the existing identified Black regions. Large consolidated regions had the advantage that they would make administration easier and result in less friction with Whites. In order to identify the proposed Black regions (reservations), “the Commission took the scheduled reserves as the basis of each area, then, so as to link together separated reserves and to secure the total area required, it added the lands adjacent thereto”. The Commission recommended that land should be ranked as mission land, then land in Black possession, followed by crown land and unoccupied White land. Black regions situated in White regions and which could not be incorporated into Black regions, should be left as they were.

It was not possible, however, to consolidate the reservations, or to make a sensible recommendation, if the addition of so-called White land was omitted from the calculation. The Whites were not amenable to relinquishing land which was inside or close to the so-called Black regions. Some held the view that the Blacks could not pay the market value, whereas others regarded this land as family land. Beaumont states it thus: “*It is, in fact, too late in the day to define large compact Native areas or to draw a bold line of demarcation; for reserves, mission lands, Native farms, and other lands solely occupied by Natives are ... scattered in all directions and hopelessly intermixed with the lands owned and occupied by Europeans ...*” All that remained was for the government to purchase land – which the 1913 Act had already provided for.

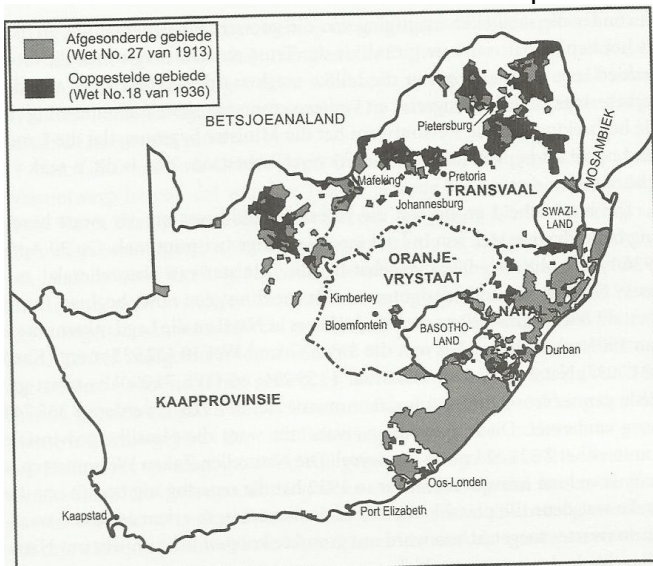
The Beaumont Commission recommended that a further 8,3 million morgen (7,8 million ha) should be allocated to the Black population, but Smuts shied away from it because he thought such a decision would be unpopular among White voters.

²⁶ . Ibid.

²⁷ . Ibid.

In summary, it can be said that the 1913 Act did place segregation on the statute books and that this resulted in deep unhappiness among Black people. The indigenous races argued that not only had the areas they had occupied when the Whites moved in, belonged to them but also that the whole country should be regarded as theirs. This swept the historical development out at the door. It is also important to note that this Act did not apply to the Cape Province's Coloureds and the Griquas. Land owned by mission stations was not taken into account in calculating the land in the possession of, or used by, Black people. Moreover the western and north-western part of the Cape Province had not been earmarked for Black regions because these regions had originally been occupied by the San and the Koi "and were never occupied by any Bantu races".

White South Africa was simply not ready for such a sacrifice and opposition to Beaumont's recommendations streamed in. Meanwhile Black opposition also grew. With the 1936 Act (Act 18 of 1936 – The Native Representation Act) a decision was made to allocate more land to Black South Africans but a trust (the South African Development Trust – SADT) was established in which land could be purchased for Black occupation.



Reservations in terms of the 1936 Act.²⁸

NP GOVERNMENT

In 1948 the National Party won the election and began implementing the policy of apartheid. This was no easy task, because the Fagan Report, which was tabled in 1948, pointed out that urbanisation was irreversible and that Black people would not return to their reservations. By 1946 the Blacks already formed 39,79% of the urban population and this percentage increased annually because of population growth. From 1921 to 1936 this population group increased by 94,48% and from 1936 to 1946 by a further 57,16%. The reservations were simply incapable of accommodating these people. Nevertheless, the Sauer Report recommended in 1953 that the policy of Apartheid should proceed and that the consolidation of the reservations be given urgent attention. The Black Authorities Act (Act 68 of 1951) provides for local management for Black ethnic communities in their own regions.

By the middle of the 1950s the NP government had already recognised seven Black regions. These included regions for the Xhosas, the Zulus, the Tswanas, South Sothos,

²⁸. *Omstrede Land*, p.169.

North Sothos and Ndebeles, the Shangaan-Tsongas and the Vendas. To speed up the consolidation of these regions, Dr Malan appointed Professor FR Tomlinson to investigate the socioeconomic problems of the Black regions and to make recommendations. He submitted his report to the government in 1954 and recommended that £104 486 000 (about R10 billion in 1998 value) should be made available for the development of the regions. His recommendations were not acceptable to the government because the Minister of Native Affairs, Dr HF Verwoerd, was convinced that the commission had encroached on his field.

Meanwhile the NP government proceeded with the establishment and creation of self-governing Black territories – a policy which the NP government actively believed would offer the solution. Together with influx control to restrict urbanisation, the Promotion of Bantu Self-Government Act (Act 46 of 1959) was adopted. In terms of this Act, the respective Black ethnic tribes were recognised as separate national units. This paved the way for the later independence of the Black territories.

In 1961 South Africa became an independent republic and in 1962 the international court recognised South Africa's control of South-West Africa (now Namibia).²⁹

The RSA population kept increasing and the Whites' fear of black ascendancy dominated their political thinking. For this reason the political emancipation of the Black nations was expedited with their own territories as the foundation. In 1963 self-government was accorded to the Transkei. This was followed by self-government for the Ciskei, KwaZulu, Bophuthatswana, Lebowa, Venda, Gazankulu and Qwa-Qwa. Growth points for creating job opportunities were identified in these territories. The consolidation of the Black territories/homelands remained a thorny issue, however, and in 1965 and 1975 the expropriation acts (Act 55 of 1965 and Act 63 of 1975) were adopted to consolidate the land areas of the homelands. Both Acts provided that South Africans whose land was expropriated had to be compensated for this. The 1975 Act provided that compensation would consist of the market value of the land, plus a sum equivalent to 10% of the market value plus a further sum for compensating the owner for any real loss or inconvenience.³⁰ In addition, in 1975 a Select Committee proclaimed a number of regions which had been thrown open, where land should be purchased for Blacks. In a presentation (1977) to the USA's vice president, Mr Mondale, the RSA government said that the government had already spent R522 million on the development of Black regions from 1965 to 1975. In terms of the 1972, 1973 and 1975 proposals, a further 39 400 ha should be transferred to the Black regions. Moreover 92 800 ha was earmarked for thrown-open or separate regions. A further 1 million hectares were in the Trust which could be transferred with the approval of the president.³¹ In 1986 the president could announce that all the land had been provided in terms of the 1936 Act, but that the 1973-5 consolidation still had to be obtained. In total, 17 608 615 ha of land had been acquired since the 1913 Act.³² Notwithstanding the independence of the Transkei (1976), Bophuthatswana (1977), Venda (1979) and Ciskei (1981), time had overtaken the NP government. An investigation into the 1976 riots in Soweto indicated that the restriction on land ownership was a leading cause. President PW Botha succeeded Adv John Vorster who actively endeavoured to expand the independent states economically. The estimate is that within two years R3 300 million had been invested in new business and industrial developments, which created more than

²⁹ . www.icj.org/docket/index.php?sum=285

³⁰ . Omstrede Land, p.271

³¹ . Ibid., p.259.

³² . Ibid., p. 262

116 000 job opportunities. These included the establishment of the Medunsa Medical University.

But the proverbial writing was on the wall. The following are a few of the factors that played an additional role:

- World opinion and sanctions.
- The increase in the RSA's population. In 2000 it was already 45 million. Today it is estimated at 53 million, including legal and illegal immigrants.
- Urbanisation has increased drastically. More and more Blacks were no longer bound to tribes. By 1985 a further 3 389 412 Blacks lived in the so-called White rural areas.

The PW Botha government began to dismantle separate development, but it was too little, too late. Consequently the 1983 Constitution was adopted, and South African citizenship was granted again to citizens of the TBVC territories.

After Mr FW de Klerk was elected president in 1989, all the provisions of the 1913 and 1936 Acts were removed from the statute books. These included:

- Abolition of Racially Based Land Measures Act (Act 108 of 1991);
- Upgrading of Land Tenure Rights (Act 112 of 1991); and
- Proclamation R28/1992 phased out the SADT and the land which was still owned in the Trust could be transferred to the self-governing territories.³³

This was the end of an era when an attempt had been made to carry out segregation (separate but equal). The RSA government had been convinced that segregation would be the political solution to South Africa's racial composition.

The historical course of land distribution in South Africa should, however, be seen against the background of colonialism/imperialism in the 19th century. Typically this meant that the conquerors took possession of the country/region/land (colony). The Voortrekkers endeavoured to evade colonial domination by migrating northwards. There they encountered Black tribes and acquired land through negotiation, the occupation of unoccupied land and conquest. Nowadays these methods or techniques are no longer acceptable, but they remain a given.³⁴

The greatest problem was the RSA governments' wait-and-see attitude, the so-called "tomorrow is another day" attitude. There was greater complaisance in the first half of the previous century and, if the government had given active attention to the Beaumont (1916), Fagan (1948) and Tomlinson (1955) Reports, South Africa could have been far different today. In 1961 the military wing of the ANC was founded, and the revolutionary struggle against SA accelerated. Therefore *apartheid* was declared a crime against humanity in 1973, but after the 1976 riots, South Africa could not remain out of sight of the international media. During the 1980s the NP government attempted to revise some of the discriminatory laws affecting Black people. This caused political ripples that induced the Conservative Party to break away from the NP.

³³ . Omstrede Land, p.268

³⁴ . Land reform also ensued in other countries after the colonial period, including Brazil, Canada, Guatemala, Indonesia, Kenya, Angola, Mozambique, Namibia and Zimbabwe. In the USA after 65 years of negotiation, the American Congress appointed the United States Claims Commission to handle the claims of the Indians. It took the commission another 31 years to finalise the claims, but even then, not everyone was satisfied.

In the greater knowledge of hindsight, it is interesting to use the numbers in an arbitrary calculation:

- It is accepted that, apart from the Koi and San groups, there were no Black tribes in the Northern and North-West Cape. These areas represent 40% of the surface area of the country.
- There were Xhosa tribes in the Eastern Cape. The Eastern Cape comprises 13,9% of SA. Say the Xhosa tribes occupied 85% of the region, this would represent 11,82% of SA.
- The present provinces of the Free State, North West, Gauteng, Mpumalanga and Limpopo comprise 38,2% of the country. This region was occupied by the Tswanas, the Basothos, the Swazis, Shangaan-Tsongas and Vendas. According to feedback from the Voortrekkers, they occupied approximately 40% of the country. This represents 15,2% of the country's surface area. Even if they had occupied 60% of the region, this represents 22,9% of the country as a whole.
- The present KwaZulu-Natal comprises 7,65%. If the Zulus occupied 85% of Natal, this represents 6,46% of the country.

Add the figures together, namely 11,82% plus 15,28% plus 6,46%. Then the Black ethnic groups, at the time when the Whites arrived in southern Africa, occupied 33,56% of the South African country, or at most 41,2% if the alternative figures are calculated. This percentage does not include the Koi and San who had a nomadic existence, particularly in the Western and Northern Cape.³⁵

THE ANC GOVERNMENT

At CODESA and during other earlier discussions, the ANC had already indicated that land reform would be one of its critical points in the negotiations for a democratic South Africa. The standpoint is defined further in the 1994 report of the Department of Land Affairs, titled: **This is our Land**.

During the first formal negotiations (CODESA), the ANC insisted that the redistribution of land had to be a priority, whereas the NP negotiators insisted on a guarantee for property rights. Agreement was reached that property rights would not be questioned without further ado, but people who had lost their land after 1913 would have the right to reclaim it. They decided on 1913 because it was the date of the first legislation that applied to the whole of SA.

The ANC government launched various actions to address land distribution, including the following examples.

Reconstruction and Development Plan 1994 (RDP). The first action of the new government was to establish equal justice in SA. This was called the Reconstruction and Development Plan. The aim was to restore land to those who had lost it owing to the policy of the previous government. As a goal it was stated that 30% of the agricultural land should be transferred to Black farmers within the first five years – i.e. by 1999.

Act 112 of 1993 (Upgrading of Land Tenure Rights). This Act provides for the upgrading of the different forms of land tenure after property rights.

Act No 126 of 1993 (Provision of Certain Land for Settlement). This Act provides for the allocation of land for settlement and financial support.

Act No 22 of 1994 (Restitution of Land Rights Act). This Act, which had been amended annually until 2003, provides for the restitution of the right to land to persons or

³⁵ . Omstrede Land, p.299

communities that were deprived of their right to land after the 1913 Act. As a matter of fact, such legislation had already been repealed by Act 108 of 1991.

Act No 2 of 1995 (The Land Administration Act). This Act determines and delegates powers to authorities.

Growth, Employment and Redistribution 1996 (GEAR). By 1996 the government realised that it would not achieve its aim of 30% transfer by 1999 and a new plan was launched. In terms of the government's macroeconomic policy (GEAR), land reform was integrated into the government's economic policy. The promotion of business interests had to generate the funds to pay for land reform. GEAR spelled out priorities such as the conversion of communal ownership to private ownership; the redistribution and restitution of land.

South Africa's Constitution. The Draft Constitution of 1993 (Act 200 of 1993), as well as the final Constitution of 1996 (Act 108 of 1996) contains sections referring directly to land distribution. The Constitution, including the following sections, may only be amended by a parliamentary two-thirds majority. More and more voices are demanding that the Constitution should indeed be amended. The relevant sections are:

- Section 25.1 which guarantees property rights.
- Section 25.2.a which gives the government the right to alienate land in the public interest.
- Section 25.2.b which provides that compensation shall be paid to the owner upon expropriation.
- Section 25.3 which provides that compensation shall be paid to those affected by expropriation. Compensation will be determined by the current use of the property, the history of acquisition, the market value of the property and investment in the property.

The Constitution also provides for a Bill of Rights, which protects the basic rights of the citizens of the country.

Green Paper 1997. The Green Paper of 1997 states that the purpose of the government's policy is "to undo the legacy of colonialism that had left the black majority landless". It spells out the principles of the government's handling of land affairs:

- Social justice
- Land must be transferred to the poor. "Marginalised groups must be identified."
- Land distribution/reform must be needs-driven with the State as facilitator. Communities' and individuals' participation in government decisions must be recognised.

Communal Land Rights Act 2004. This Act provides that 17 million ha of common land of the former homelands must be surveyed in viable small farms and be transferred to the 21 million people still living in the former homelands. The Bill was declared unconstitutional by the Constitutional Court in 2010 "due to lack of public consultation".³⁶ This emphasises the problem of communal land ownership as opposed to individual rights. Dr Mamphela Ramphele³⁷ had to take the legal route to acquire the land to which her family owned the title deed, but that the tribal chief had allocated to another person.

Proactive Land Acquisition Strategy 2006. Strategy to speed up land reform.

Draft Expropriation Act. In 2008 an announcement was made that the government wanted to declare agricultural land a national asset. This was not adopted in legislation.

Green Paper 2011. On 30 September 2011 the long-awaited Green Paper was announced in *Government Gazette* 34656. The document had been anticipated with great expectation but it merely summarised the existing policy frameworks which did not work. Nationalisation is foreseen at nearly every level of South African society, but it

³⁶. The Star, 4 April 2013. Chief Concerns behind Land Tenure.

³⁷. Mamphela Ramphele. 2012. *Conversations with my Sons and Daughters*. Penguin Books, Johannesburg. Pp.46-47.

concentrates on agricultural land. The traditional tribal regions and their utilisation for commercial agriculture are not addressed. The Green Paper acknowledges that budgetary and management problems exist in the Department of Land Affairs.

Expropriation Bill. On 20 March 2013 the Draft Expropriation Bill was published in the *Government Gazette*. The purpose is to put in place a framework and processes for the expropriation of land. In terms of section 2, the Minister may expropriate land in the public interest. It replaces Act 63 of 1975.

HOW SUCCESSFUL WAS THE ANC GOVERNMENT?

The ANC government maintains that land distribution is not progressing quickly enough and that the principle of Willing Buyer and Willing Seller does not work. Politicians hold the view that they will not achieve the 30% target in 2014, and consequently it has become a theme for the 2014 election. Successes and failures are not easily come by, but the following are a few examples:

- By 2002/3 a total of 36 488 land claims had been finalised.
- By 2007 the sum of R16 billion had been spent on the handling of land claims. In total, 74 417 claims were finalised.
- From 1994 to 31 January 2013 a total of 4 813 farms were transferred.³⁸

In the *Mail and Guardian* of 5-11 April 2013, Minister Gugile Nkwinti (Rural Development and Land Reform) makes some interesting comments. He states unambiguously that the 30% transfer of land can indeed be achieved in 2014. He comments that out of a total of 77 148 finalised land claims, only in 5 856 cases was land transferred to new owners. The rest, i.e. 71 292 claims, were paid out. He continues: "If these claims were transferred into hectares and properly quantified, it would reveal far greater progress than has been acknowledged." He also gives his reasons: "... Dynamics have changed. People have become urbanised ... number two, because of poverty and unemployment people are opting for money."

Then the land available in the open market has not been taken into account either. **Stone Sizani** is also of the opinion that 2014 is not achievable, because "these targets were based on the heart – not the facts" (2010).³⁹ One should rather look at 2025.

Moreover, the farms that were transferred have not been very successful. In 2010/11 a sum of R1 billion was budgeted to make 504 failed farms productive again. In 2008 the DA found that many of the farms that had changed ownership were being used for subsistence farming. Of these, 29% had failed and 22% were on a downward curve. This jeopardised food security.

The State has a big problem. It does not know what land belongs to whom. As long ago as in 2008 the ANC congress at Polokwane decided that a proper land audit had to be done. In 2009 the Auditor-General stated that he did not know who owned what. In 2013 it was stated that the audit of State land had been completed, but the details are not yet available.

If we take into account that the land on which there were land claims but which were paid out to the claimants in cash, has probably not been factored into the transfer of land, the authors of *Omstrede Land* come to the conclusion that land distribution in SA should be more or less as follows: **(Percentages)**

³⁸ . *Mail and Guardian* of 5-11 April 2013

³⁹ . *Omstrede Land*, p.291.

Year	White	Black	Other	State (and/or unoccupied)
1652	0	34	0	66
1913	70	8	1	21
1936	71	13	1	15
1980	73	14	1	12
2001	44	20	11	25
2006	41	23	11	25
2010	36	28	11	25
2012 (expected)	34	30	11	25

Yet many questions remain:

- What about the land bought by the SADT and transferred to the self-governing territories? Is it factored into Black land ownership?
- What became of the compensatory land bought or swapped in the time of the NP?
- Did the State keep control of the land for which compensation had been paid?
- Who is really giving attention to the purchasing of the land available in the open market?

SUMMARY

Land is and remains an emotional matter and land distribution requires leaders with exceptional insight. At present the standpoints on land are politically loaded and the points of departure are light years apart. The standpoint of most of the ANC supporters is that white South Africans acquired land in an illegal manner. Malema stated publicly that the Whites stole the land. By contrast there is proof that the Whites acquired land in a manner that had been acceptable for centuries.

In 2014 the next parliamentary election will be held and the political parties are already beginning their election campaigns. Land reform, and the 1913 Act in particular, play a huge role in these campaigns. The process is complex, however, and progress is not clear, with the result that parties turn to propaganda and slogans – which are not always based on facts. The goal is to increase the pressure on the government and to influence voters.

In this regard, trade unions are part of the political rhetoric. Their demands vary from real grievances to unreasonableness.

But what lies ahead? *Omstrede Land* highlights various lessons.

- Firstly the inability or unwillingness of all governments to address the land issue actively. The issue should be tackled rationally with as little emotion as possible. Leaders at all levels should act responsibly and refrain from emotional statements. They should utilise the goodwill that still exists among South Africans.
- The agricultural unions/organisations should determine a common strategy and speak unanimously.
- Begin at the beginning. We have endeavoured to give a historical base line through *Omstrede Land*, but it is not being accepted. A factually correct database should be compiled on who owns what. All role players should accept it. That is why a full audit of land is necessary. It will not be easy, but without it we do not know what we are talking about.

- Removing the 1913 Act as the cut-off point would make it extremely difficult for the government. How far back should we go then?
- Think outside the box. Land is the political problem, but the realities are poverty and unemployment. Are there alternatives?

Land reform in South Africa can only succeed if it is applied fairly and honestly. Lies and half-truths only sweep up emotion and weigh down any sensible conversation. History may be ignored for the sake of convenience, but it cannot be removed or reasoned away. The historical convergence of circumstances has placed people of different ethnic origins together in this country, and it is irreversible.

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