



## Urban Land Ownership

### 1. Introduction

The question of land in South African policy and legislation often focuses on rural or agricultural land. In Parliament, the discussion is usually about land transfers to emerging farmers and support for them, and about making land available for communities in country areas. Almost as if to legitimate this framing of the land discourse as a matter of rural and agricultural relevance, the government department dealing with land matters is referred to as the Department of Rural Development and Land Reform (previously the Department of Land Affairs). The questions of urban land, its use, and its ownership, are either ignored or constructed in terms of the provision of housing or urban economic development. So, what is the true state of urban land ownership in South Africa?

South Africa is urbanising, in line with the trend in a number of other developing countries. It is estimated that by 2030 50% of Africa's population will be living in urban areas. In 2010, as many as 62% of South Africans lived in urban areas, an increase from 52% in 1990; partly as a result of this rapid urbanisation, poverty and unemployment remain very high in these areas.<sup>1</sup> In 2006, South Africa had an urbanisation rate of 56.25% (the rate at which people move from rural to urban areas resulting in an increase in the population of urban areas) and between 2001 and 2006 it was reported that the urban population was growing faster than the national population<sup>2</sup>, while population in rural areas dropped from 48% to 38% over the same period<sup>3</sup>. This suggests that more focused action around land use and management in urban areas is required so that a more equitable and sustainable use of land may be ensured.<sup>4</sup>

### 2. Apartheid Era Land Acts

At the heart of the South African urban landscape is the legacy of the apartheid Group Areas Act. The Act defined land occupation according to racial and ethnic classifications. It was enforced on the urban landscape to create the kind of segregated cities and towns that still define the South African urban landscape today. The places where white South Africans lived became the 'towns' and where others lived became the 'townships'. Townships were reservoirs of labour and not really places of proper human habitation and development; they were often characterised by very high population density and the related poverty and squalor. In fact, in order to understand South Africa's current land woes, it is important to go back to the Native Land Act of 1913. B.M Mahlangeni<sup>5</sup> argues that the aim of the Land Act was to ensure the land dispossession of the black majority in South Africa by depriving them of their right to own land in all but a few small, closely defined parts of the country.

A number of other Acts passed by the apartheid regime entrenched the land dispossession of the black population in South Africa. These included the Native Administrative Act, 1927, and the Bantu Trust and Land Act, 1936, both of which sought to dispossess blacks of their land and to further entrench that dispossession. This, in turn, led to the proliferation of informal settlements with no service delivery at all. It was only in the rural areas that black people were allowed to own land, and they had to apply for ownership. In this process, 87% of the country's land was allocated to the white population, leaving only 13% for the black masses.

This remains the case for the great majority of South Africa's poor, largely black population, today. Twenty years into the new South Africa, many towns and cities still maintain their old apartheid spatial planning and ownership

patterns. Despite the repeal of apartheid land and residential legislation, very few suburbs and townships have become fully integrated.

### **3. Land Reform: No Change in Urban Areas?**

Last year, the minister of Rural Development and Land Affairs proposed a controversial scheme of giving 50% of farm ownership to the workers on the particular farm. This, according to minister, will help to protect farm workers from being evicted from farms after years of service; in effect, they will have security of tenure by virtue of being owners of the land. What is interesting about this proposal is the fact that it says absolutely nothing about urban land. This gives the impression that the fact that 80% of a town's land is owned by 5% of the population is acceptable to the government, but when 60% of rural land is owned by 30% of the population, then it becomes unacceptable. As mentioned above, South Africa is urbanizing at a high rate, meaning that people and activities are being concentrated in cities. The burden on cities to provide economic opportunities, housing and infrastructure is steadily increasing, and this requires that land be available to accommodate city dwellers and the people that are moving into cities in large numbers.

Why, then, is there seemingly less concern about land issues in the urban areas? It appears as though the government is leaving the land issue to the markets to sort out, within formal and legally recognized spaces. However, Caroline Wanjiku-Kihato points out that most land transactions take place in the informal market where the law cannot regulate their form or how they take place. She further states that even in South Africa, a country that boasts one of the most extensive formal land systems, people still acquire land using informal means. Leaving this problem to the markets creates further problems because those who move from rural areas to urban areas cannot afford to purchase good, accessible land that is close to places of work and other facilities. Mercy Brown-Luthango notes that the urban land market has been identified as an obstacle to the poor accessing the land.<sup>6</sup> Left to the markets, land redistribution in urban areas will not serve the purpose of transferring land from the rich to the poor.

Brown-Luthango also notes that such issues as land speculation, where people withhold land from the market so as to inflate its price, will prevent the urban poor from accessing affordable

and well-located land. This further entrenches the legacy of apartheid, where black people were pushed to the outskirts of cities while white people enjoyed the benefits of staying inside the city where everything is accessible. However, as history has shown, without land to bequeath to the next generation, and always having to buy land from white owners, the previously disadvantaged have become the presently disadvantaged. Intergenerational wealth is being transferred through land-ownership. The fact that huge numbers of black people who were born in matchbox houses in townships across the country end up generation after generation still living in the same place, shows the difficulty of breaking the cycle of poverty – defined along racial lines – that people find themselves trapped in because of land ownership issues.

To be fair, the racial and ethnic composition of many towns and cities is slowly changing. However, what has not changed is the spatial planning and ownership patterns of land in these places. Those who owned land in the past still own large parts of it, and the poor still remain outside. This leads to challenges such as land invasions, where poor people occupy open land illegally so as to build homes for themselves; and the result of this is the noticeable growth in the number of informal settlements in urban areas.

### **4. Restitution vs Redistribution**

Much of SA's land reform has been focused on land claims and returning land to claimants. Where no claim is laid, there is no restitution. Thus, although the government can claim to have restored nearly 95% of all claims, these amount to only about 5% of the country's land. In rural areas, where land ownership is usually easy to determine, and disputes are simpler to resolve, restitution becomes easier. However, in urban areas, where land has gone through many hands, it is often too complicated to assess which piece of land belonged to which community or individual. A good example is the extraordinary difficulty that has beleaguered the District Six land restitution project.

What has complicated urban land reform even further is the fact that sometimes the poor community living in the dusty township at the edge of town was not removed from that town's land but rather is made up of people who have been dislocated from various places and collected into one township. In such cases not even land

claims can assist in redistributing land to the poor. To complicate the matter even more, when the apartheid government was allocating land, the average white family received a relatively large plot, while the average black family had to be content with a tiny space; sometimes, the houses had to be joined together to fit them onto the available land. As a result, in many places one ends up with staggering population density figures. The government needs to come up with ways to regulate land ownership in urban areas so that all urban residents can be accommodated on the available land in a manner that is suitable for the betterment of people's lives.

The idea of taking away urban land raises extremely emotive fears, as for most people urban land is the site of their home; thus, any talk of taking away urban land raises the spectre of people losing their homes. Because of this, the inequalities and injustices in urban land are generally left to be resolved by market forces. The case of Sophiatown, where the then racially mixed community was forcibly removed, and the land subdivided into big properties and sold to white owners at very low prices, is a good case in point. The fact that the subsequent white owners of the land had paid for it is taken as absolving them of the crime that was committed in order to make that land available to them; and, further, when the original occupants of the land wish to return, their claim does not fall on the present occupiers, but on the state. In the case of Sophiatown, those that could show historical ownership were given financial compensation. However, the value of their compensation did not equal the loss they incurred, while the beneficiaries of the forced removal continue to occupy what has become prime land. Those that lost the property and moved to Meadowlands in Soweto, into a fragment of land that they did not own because it belonged to the city council, ended up impoverished and having nothing of value to bequeath to their children, thus perpetuating intergenerational poverty.

Unfortunately, this scenario has been repeated in many towns and cities across the country where it has become almost impossible to trace land ownership; and thus restitution is no longer possible. In many cases this means that the black communities that lost land in urban areas are doomed to intergenerational poverty because restitution is too complex or even impossible.

Surely the question arises of what would be just in these cases?

Even a simple view of average plot sizes in previously white areas reveals a huge disparity in land size, with white-owned properties much larger than those owned by other racial groups. This means that, in most urban areas, the ownership of land will be skewed in favour of the white population, while the black population in particular ends up owning a minute portion of land, often on the outskirts of the town or city. And this means, in turn, that land wealth will continue to be racially defined and determined.

## 5. Conclusion

Urban land ownership seems to be a challenge not only in South Africa but in the developing world at large, due to the rate at which developing countries are urbanizing, as well as the legacy left behind by colonialism, which resulted in black people having to move out of the most desirable parts of cities so as to make way for white people to own large plots in affluent areas. Even 20 years after the demise of the apartheid regime in South Africa, many cities and towns still resemble the geo-economic structure set up by the colonial and apartheid regimes. This means that the poor and landless of yesterday remain the poor and landless of today, and if nothing is done to regulate land redistribution and ownership in urban areas, this picture will remain for generations and generations to come. Markets have failed to facilitate fair and equitable distribution of urban land. It is now up to the government to introduce legislation that will yield results fair not only to the rich, but to the poor too, so that indeed the land in South Africa may belong to all who live in it, as is stated in the Freedom Charter and in our Constitution.

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### **Mandisa Dyantyi** **Research Intern**

*Mandisa is studying towards her Master's degree in Political Studies at the University of the Western Cape, as part of which she completed a six-month internship at the CPLD.*

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<sup>1</sup>Cronje, F. (2012). Land Reform and Land ownership in South Africa. <http://www.ngopulse.org/article/land-ownership-and-land-reform-south-africa>

<sup>2</sup>Brown-Luthango, M. (2009). Access to Land for the Urban Poor-Policy Proposals for South African Cities. In *Urban Forum* (Vol. 21, No. 2, pp. 123-138). Springer Netherlands.

<sup>3</sup>South Africa: Two-thirds urbanized. (2013). <http://www.southafrica.info/news/urbanisation-240113.htm#.VIAWQntqyII>

<sup>4</sup>Brown-Luthango, M. (2009). *op. cit.*

<sup>5</sup> B.M Mahlangeni (2013). Reflections on the impact of the Native Land Act, 1913 on local government in South Africa. Research Unit, Parliament of the Republic of South Africa.

<sup>6</sup> Brown-Luthango, M. (2009). *op. cit.*

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