

LAND-Draft Speech

We are looking forward to a future where there will be rights for all South Africans. When every adult will have the right to vote, the rights of full citizenship the right to live where he or she chooses. These are rights that can be extended to everybody by de-racialising our society.

But what about the right to land? Land is finite and most of the land in South Africa is presently owned by someone or other. The implication of this statement is that for everyone to have the right to land, land will have to be taken away from those who have it at the moment and given to those who don't. The right to land is not an easy right that can simply be extended from the minority to the majority by a political decision.

This matter of the getting of land, by taking it away from others, has been at the heart of the land issue since time immemorial. It explains why the land issue arouses such strong feelings and why it has so often exploded into violence. We have only to listen to the speeches of the AWB and the PAC to be reminded of the centrality of the land issue to the question of racial domination.

The AWB asserts that the land belongs to the Afrikaners, the PAC asserts that the land belongs to the African people. Both sides are basically arguing about who South Africa belongs to; and they are correct in associating control over land with political power or sovereignty. After all, white domination in South Africa was imposed primarily through wars of conquest in which the land was wrested from the African kings who originally controlled it.

The present constitution embodies the notion that political power is built on the white ownership of South Africa. It begins "In humble submission to Almighty God, who controls the destinies of nations and the history of peoples, who gathered our forebears together from many land and gave them this their own; who has wonderously delivered them from the dangers that beset them;..."

It is pretty obvious what the dangers were, they were people led by Dingane, Ngqika and Makhanda, who were fighting wars of survival to defend the land that was the basis of their agricultural economies and the measure of their political freedom.

The history of land in South Africa has been a tragic story of wars, blood and violence. At its heart it has been a history of racial domination. In his autobiography Chief Albert Luthuli expressed it as follows:

"The basic point at issue in South Africa is the question of ownership... One cannot separate the issue of race from the argument about ownership at present, because one race insists on exclusive ownership. Who owns South Africa?... the overwhelming majority of whites reply that South Africa

is exclusively owned by three million whites..... In this view the whites, because they are "white", extend their possession to the ownership of (black) people, who are expected to regard themselves as fortunate to be allowed to live and breathe and work - in a "white man's country".

As long as the issue of ownership is counterposed as black verses white, it will never be moved outside the vehemence of conflicting claims to political power. The ownership of land will remain the call to arms that it presently is for both the PAC and the AWB.

The ANC's position in relation to land and ownership is clearly stated in the opening words to the Freedom Charter which begins. "South Africa belongs to all who live in it, black and white". We firmly believe that the only solution to the question of conflicting claims to land is to de-racialise the issue and build a system of land tenure which is legitimate and fair for all South Africans. Only then can we move away from the division between having and taking away, winning and losing, yours or mine, that presently concerns the PAC and the AWB. As Chief Albert Luthuli stated "the great majority of Africans reply that country....is jointly owned by all its inhabitants, quite regardless of their colour - when it comes to participation in ownership and government, race must be made wholly irrelevant..."

How then do we practically de-racialise the land issue? Will it be enough for the government to scrap the Land Act and the Group Areas Act? Will the problem be solved if African people are finally allowed to buy and own land in the 87% of South Africa that has been reserved for whites only?

The answer is no, that will not be enough. Centuries of racial exclusion and exploitation have made the vast majority of black people poor. Much too poor to buy land at current market prices. Furthermore why should we expect the whites who currently own 80% of South Africa to now decide to sell their land? On the other hand why should we expect Africans to "buy back" land which they believe was taken away from them by illegitimate means. We have only to consider the position of the millions of black people who were dispossessed of their land in terms of the government policy of forced removal. Can they be really be expected to pay for it all over again?

When we say that the land problem cannot be resolved by simply opening the property market to all South Africans we seem to terrify many of our white compatriots, the big business interests and even some foreign governments. They tell us that the system of private property is essential to the ability to enter into the contractual relationships which are the basis of a free market economy. They say that the system of private property protects the rights of the individual against encroachment by the state. In this context they believe that the present system of property relations in South Africa must be upheld at all costs.

Let us look in some detail at how the system of private property applies to land in South Africa.

The first title deeds reflected transfers of land from colonial governments and Boer republics to their whites citizens. In some cases land was granted directly to settlers, and in some cases the settlers' leases were converted to freehold title. There are also cases where people bought land from the new governments. How did these governments come to have the land in the first place? They got it from the original African inhabitants of the country by wars of conquest and through treaties and contracts signed by African leaders who could neither read, nor understand the conquerers complicated legal language.

Many African people responded to the initial loss of their land by collecting money and buying land in terms of the new white property market. The Beaumont Commission heard evidence in 1916 from magistrates all over the country that black chiefs were squeezing whites out of the property market because they paid higher prices. The magistrate explained how each individual in the tribe contributed money from the sale of cattle and so large sums of money were quickly collected. White farmers complained that this was unfair competition.

This evidence was given after the Land Act had been introduced in 1913. So even after black people were prohibited from buying land in all but 7% of the country, they still managed, by using every loophole, to be effective competitors on the land market. So effective that more and more laws and amendments were introduced to prohibit the majority of South Africans right to either own or lease land. The few areas where Africans had managed to buy land came under attack from the policy of forced removal and expropriation. African peoples' title deeds counted for nothing in the eyes of the Nationalist government, they were no protection against removal and dispossession. Section 5 of Black Administration Act which empowered the State President to order the removal of any Black person, tribe or community from any place to any other made no mention of the protection of private property. Section 5 was used to remove black land-owners right until its abolition in 1986.

The fact that it was abolished doesn't mean that the government has since developed respect for the property rights of black people. The struggle of the Mogopa people illustrates that considerations of race still override the "sanctity of private property".

The Mogopa community owned two farms in the Western Transvaal near Ventersdorp. The government dispossessed them by brutal physical force in a removal under Section 5. That was in 1984. The people fought this on the States' own terms and in terms of the States' own laws. They challenged the removal in court, and won their case in the Appellate Division. While the case was pending the state again attacked their property rights, this time

by expropriating their land. Again they struggled for a solution on the states own terms. They found another farm in the Western Transvaal, which was scheduled black land and which they could legally buy. They raised the money to buy the land. As soon as the state heard of this, and as the sale was about to go through, the state expropriated this land too. This was in 1987. Then the state announced that Mogopa itself was going to be sold. The community offered to buy the farm - to buy back their own land! The governments answer, in 1989, was that only white people can buy it. This is not a relic of history, it is just one present day example of how political and racial considerations over-ride black property rights in South Africa.

Private property is a "whites only" system in this country. Only whites can buy and own land in 87% of the country. And it is only the title deeds of white people which are respected as inalienable and secure from political intervention.

What of the 13% of the country that was set aside for black people. What system of property relations is prevalent there? It is certainly not private ownership of land. Why is this? Because successive white governments held that the most appropriate form of land tenure for black people was that the land should be held in trust by the government. Thus the government-run South African Development Trust and the Bantustan authorities own the vast majority of black land.

Black land is nationalised land, white land is private property. This is the reality of property relations in our country both historically and today. Thus when the government argues for the protection of the system of private property it is defending white ownership of South Africa. It cannot pretend to be defending one ideological system over another. How does it explain why nationalised land was good enough for the 13% of the country reserved for blacks, and yet it is totally unacceptable for the rest of South Africa.

Private property in general has many qualities that are respected by the Western world. It is a fair system based on reciprocal contracts, it is ordered and abiding, it is a secure from state intervention. None of these qualities have ever been upheld in the South African system of land ownership. Race have over-ridden the rights of private property in every aspect of property relations.

For us to try to build a fair, legitimate and non-racial system of land-ownership on the edifice of so called "private property" that we have inherited would be pure window dressing. To merely abolish the Land Act and thereby enable a tiny proportion of well-to-do blacks to buy land can never undo the racial underpinnings of the present system.

Where then should we seek an answer to the urgent problem of land re-distribution? Because unless the question of "Who owns South Africa" is de-racialised it will be a perpetual flashpoint of

violence around conflicting claims to sovereignty.

It is not worth getting entangled in debates about private property verses nationalisation. In South African even these ideological debates are entirely entangled with racial factors. Besides, our situation proves that whether land is nominally owned by the state or by a private individual makes no real impact on the burning question of who lives there and their security on the land. There are millions of so called "squatters" living on privately owned land. Not even the strict enforcement of the draconian Illegal Squatting Act has managed to reverse this reality. On the other hand, where land is officially owned by the state, as in the Bantustans, individual families are the "owners" of particular pieces. They inherit it, use it share-crop it and defend their rights to it when these are attacked, as happened with the rehabilitation schemes.

For most South Africans the burning issue at the heart of the land question is how people get access to particular pieces of land, and how secure their right to live on, and use that piece of land will be.

This is not a matter that can be solved by any government counting the people and counting the land and then allocating the land to the people in "fair shares". The right to particular pieces of land is a deeply historical question based on specific claims. The claims may be based on birthright, or the graves of ancestors who originally owned the land. They may be based on having lived in a place for decades, or on having developed and farmed the land productively and well. They may even be based on the simple necessity of having a place to live near work.

In most cases these claims are deeply felt. If a future government wishes to develop a stable, accepted allocation of land it has to find a way of mediating the different claims to land which is considered legitimate and fair by all the claimants. To do this it needs to understand the values and beliefs which inform these claims. If these are not expressed the present disputes about land rights and historical injustices will never be settled. These disputes are real and powerful and on-going. The government has tried to suppress them through racial legislation and physical processes of eviction and removal. But it has never succeeded. The land question cannot be stabilised through force and state intervention. It can only be settled by reaching an equitable solution.

Will it be easy to develop a set of criteria for mediating land claims which reflects the perceptions and meets the needs of all South Africans? The answer is no, it will not be easy.

But I have confidence that it will not be impossible. There are certain fundamental values which are common to all our cultures. Both Africans and Afrikaners believe in "birthright". All our various cultures believe in inheritance and security of tenure. There is nothing strange about people who have lived on land for

decades claiming a right to it. This is reflected in the international law of prescription, in the struggles of Afrikaner bywoners against their English landlords and in the present struggles of African labour tenants against their white landlords. There is a resonance in all our cultures for the rights of those who use land productively and respectfully over those who waste it.

We need to build a system of legal rights from these common values which functions fairly and equally for all people. Only in this way can we de-racialise the system of property relations.

What about the existing property relations in our country? This is a burning question for all of us because it concerns the present distribution of land.

We cannot graft a fair, truly non-racial set of criteria onto the present system, because it is profoundly racial. But if we are honest is our intention to recognise the different beliefs and claims to land which exist in South Africa we have to take private property into account as one of these. Still it is only one among many, it can gain legitimacy only if it is stripped of its debased and racial character. For centuries it has functioned as the opposite of what it is meant to be, instead of providing for security and equality before the law it has been used to favour one race over others. It is the measure and the means of the dispossession of black people.

Thus the claims of private property will have to be mediated alongside other claims. They cannot be taken to over-ride all others. For example an African family who has lived on land for generations and supported itself from agriculture has a claim which is very strong compared with an absentee white "owner" who has left the land fallow. But a white owner who was also born on the farm and uses it productively has a strong claim too.

There will have to be some form of compensation in situations where valid claims are in conflict with one another. There will be situations where the claims are difficult to adjudicate because of being equally strong. But there will also be situations where one claim is much stronger than another. In many cases the claims will not be mutually exclusive, the claims of security for tenancy may not conflict with the "owners" claim to control a portion of the farm. Furthermore claims may not always be expressed as claims to ownership and control of land per se. While this is likely to be the case for people who have retained aspects of peasants agriculture, people who have become proletarianised farm labourers are struggling for the right to representation and better wages and working conditions. The struggles and claims in the different agricultural zones of South Africa vary greatly.

It is partly because of this that I am confident that the process of reaching an equitable solution to the land question will not disrupt our agricultural productivity. People tend to claim what

is viable and within their experience. Black farmers who were removed from their land want their land back so that they can farm it again. Labour tenants want security on the land they have farmed for generations. But vineyard workers don't want to destroy the wine industry. They want to be treated fairly and decently as people who contribute to a viable industry. Many of our people have become proletarianized workers, their struggles are very different from the land struggles in the less mechanised farming zones. For them the real issues are to do with the fair management of the industry, not the ownership of the land.

Finally it is sometimes argued that we cannot interfere with the present racial land monopoly, unfair though it is, because that would damage food production. In other words it is argued that it is better for some people to starve because of having no land, than for agricultural production to collapse and all of us to starve.

This argument is based on two myths. The first is that blacks are bad farmers. This is not true. History shows that African people were effective producers of food for the nation before the state intervened to crush African agriculture. Even now African people who have a decent amount of land do produce agricultural surpluses despite the fact that they are denied the subsidies, loans, extension, transport and marketing services provided to white farmers.

The other myth is that present white agriculture is highly productive. The facts revealed in research carried out by the Development Bank, the Department of Agriculture and by academics from the Afrikaans universities speak differently. They show that only 20% - 30% of the white farming sector is productive, and the rest is inefficient and ecologically damaging. Even the core effective sector needs massive subsidies to maintain it. Many agricultural experts believe that effective national food production requires that smaller-scale, lower technology farming methods should be actively supported by the state. The dramatic increase in food production by the peasant sector in Zimbabwe confirms this view.

In conclusion. I wish to say that we are faced with difficult challenges, but challenges that contain enormous potential. We believe that greater equity will unleash increased productivity because it will remove the racial restrictions on the hundreds of thousands of black farmers who are one of our national assets.

Furthermore a process of mediating land claims will, if it is proved to be fair and unbiased move the land issue away from one which embodies racial domination, to one which embodies values and processes held dear by all our cultures.

Legal systems world-wide provide mechanisms for regulating processes informed by humanity's belief in concepts of birthright, inheritance, security of tenure, and equality before the law. Let us reintroduce these principles into our law, not by ideological debates about one system over another, but by hammering out

criteria and procedures for resolving claims which are considered legitimate and fair by all South Africans.

As long as the deep racial bias in our present system of land ownership and the wounds of the past are not acknowledged and resolved by a fair and truly non-racial process land will remain the rallying cry for warring armies. The ANC has always said that South Africa must belong to all its inhabitants black and white, let us strip the values of security and productiveness and equality and inheritance of the racial bias that is our tragic legacy and build a truly South African system on these commonly held ideals, in their untainted form.