

Land needed - land wanted: Which and for whom?  
Background and Perspectives

Ben Khumalo-Seegelken<sup>©</sup>

*Background and point of departure:*

'Land' has two broad meanings: *the landscape* valued for its natural resources (cultivation, living space and natural beauty) and *the territory* with which a particular people identify (Jary and Jary 1995).

Land in South Africa today - landscape and territory - still is a commodity mainly in the hands of a relatively few individuals, households and corporations grossly in perpetuation of exploitative residential, labour- and tenant-settings resulting from colonial dispossession and apartheid subjugation all of whom are deeply in contrast to the very basic formulae of 'just and right', peaceful and reconciled co-existence in every respect - *a highly explosive state of affairs*.

The constitutional protection of private property in post-apartheid South Africa can occasionally, however, not but be seen as unwarrantedly *legitimising* both past dispossession and the current ownership of property acquired through colonial conquest and apartheid - an intrinsic limitation on any programme of reform and redress. (Ntsebeza 2007). Such constitutional protection for land and related rights is "rather unusual", but nevertheless "understandable", given the symbolic importance of land in South Africa. (Pienaar and Brickhill 2007).

South Africa urgently needs a debate about the very basis of community and state: a debate not only on the 'land question', but about every aspect of how agriculture works, how we feed our people and how we care for the environment Andries du Toit, 2008) in rural and in urban areas. (*Water, food, shelter and good health* could soon be somehow better affordable on a broader scale; more and more 'shack-dwellers', 'illegal occupiers' and other 'landless' communities in post-apartheid South Africa would soon gain ground under their feet.

Moving beyond a 'market-based approach' to land acquisition - which has received much attention of late - will need to be located within a wider policy shift. (Ruth Hall et al 2009).

---

<sup>©</sup> Dr. Ben Khumalo-Seegelken, <http://www.benkhumalo-seegelken.de/wissen.html>, born at Vryheid/South Africa in 1950, youth leader and Black Consciousness activist in the early 1970s, studied Private Law and Economics in South Africa, was forced to exile and landed in Germany in 1975, studied Theology and Social Paedagogics in Germany, is initiator and director of the bible-translation project "*Biblia Zuluensis - iBhaybheli ngesiZulu*" <http://www.benkhumalo-seegelken.de/ibhaybheli.html>, part-time lecturer in Intercultural and Diversity Education and in Theology at the Carl von Ossietzky University in Oldenburg, Germany, and part-time lecturer in the Faculty of Economics at the University for Applied Sciences in Bremen, Germany. Ben Khumalo-Seegelken is visiting the University of Stellenbosch and the University of the Western Cape in 2010 to exchange views on issues pertaining to [Land ownership, land reform and perspectives](#) in South Africa today.

### *Perspectives:*

Land needed – land wanted: Which land and for whom?: In this study I intend examining some of the current approaches to the ‘land question’ touching on “the security- and stability-seeking tendency of tradition and legal culture” (André van der Walt 2009) and exploring the feasibility of *radical restructuring* (Ruth Hall et al 2009) by means of policy or legal measures that could help counteract the dominance of agribusiness and contribute towards converting the agricultural sector in one of two the directions: one dominated by smallholder production without a core of commercial farming or one dominated by state-controlled estate farming on nationalised land.

The territory and the horizons of post-apartheid South Africa urgently need thorough scrutiny and far-reaching transformation including *expropriation* in the light of the values underlying the country’s democratic foundation – *the constitution*, if justice, political stability and enduring peace were to be ensured and sustainable economic security realised.

### *Literature:*

Ainslie, Andrew (ed). 2002. Cattle ownership and production in the communal areas of the Eastern Cape, South Africa. Research report no. 10. Cape Town: PLAAS (Institute for Poverty, Land and Agrarian Studies)

Brand, D. 2005. ‘The “Politics of Need Interpretation” and the Adjudication of Socio-economic Rights Claims in South Africa’ in AJ van der Walt (ed). 2005. ‘Theories of Social and Economic Justice. Stellenbosch: African Sun Media. 17-36.

Cowen, D.V. 1984. ‘New Patterns of Landownership. The Transformation of the concept of Landownership as Plena in Re Potestas.’ Johannesburg: University of the Witwatersrand, Faculty of Law.

Hall, Ruth. 2009. ANOTHER COUNTRYSIDE? Policy Options for Land and Agrarian Reform in South Africa. Cape Town: PLAAS (Institute for Poverty, Land and Agrarian Studies)

Kepe, T, Hall, R and Cousins, B. 2008. LAND. in: Nick Shepherd and Steven Robins (ed): New South African Keywords. Johannesburg: Jacana. 143-156.

Langa, P. 2006. ‘Transformative Constitutionalism’ 17 Stellenbosch Law Review 351-60.

Liebenberg, S. 2006. ‘Needs, Rights and Transformation: Adjudicating Social Rights’. 17 Stellenbosch Law Review. 5-36.

Mostert, H and Fitzpatrick, P. 2004. ‘“Living in the Margins of History on the Edge of the Country” – Legal Foundation and the Richtersveld Community’s Title to Land’. Tydskrif vir Suid-Afrikaanse Reg.309-23, 498-510.

Ncapayi, F. 2005. ‘Land Need in South Africa: Who Needs Land for What?’ MPhil thesis, Programme for Land and Agrarian Studies (PLAAS), University of the Western Cape.

Pienaar, Juanita and Brickhill, Jason. 2007. ‘Land’ in: Constitutional Law of South Africa. 48-68.

Pienaar, J. M. and Muller, A. 1999. ‘The Impact of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 on Homelessness and Unlawful Occupation within the Present Statutory Framework’ 10 Stellenbosch Law Review 370-96.

- Roux, T. 2004. 'Continuity and Change in a Transforming Legal Order: The Impact of Section 26(3) of the constitution on South African Law'. 121 *South African Law Journal*. 466-92.
- Sachs, Albie. 1990. *Rights to the Land: A Fresh Look at the Property Question. Some Starting Points*. London: South Africa Constitution Studies Centre.
- Terreblanche, S.J. 2002. 'A History of Inequality in South Africa, 1652-2002'. Scottsville: University of Natal Press.
- Van der Walt, A.J. 1990. 'Towards the Development of Post-Apartheid Land Law: An Exploratory Survey' 23 *De Jure* 1-45.
- Van der Walt, A.J. (ed). 1991. *Land Reform and the Future of Landownership in South Africa*. Cape Town: Juta.
- Van der Walt, A.J. 1995. 'Tradition on Trial: A Critical Analysis of the Civil-Law Tradition in South African Property Law' 11 *South African Journal on Human Rights (SAJHR)* 169-206.
- Van der Walt, A.J. 2002. 'Exclusivity of Ownership, Security of Tenure and Eviction Orders: A Model to Evaluate South African Land-Reform Legislation'. *Tydskrif vir Suid-Afrikaanse Reg (TSAR)* 254-89.
- Van der Walt, A.J. 2008. 'Property, Social Justice and Citizenship: The Transformation of Property Law in Post-Apartheid South Africa' 19 *Stellenbosch Law Review* 325-46.
- Van der Walt, A.J. 2009. 'Property in the Margins' Oxford and Portland, Oregon: Hart.
- Wegerif, M, Russell, B and Grundling, I. 2005. *Still Searching for Security: The Reality of Farm Dweller Evictions in South Africa*. Polokwane: Nkuzi Development Association; Johannesburg: Social Surveys.