

The Natives Land Act of 1913 and its legacy

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Introduction

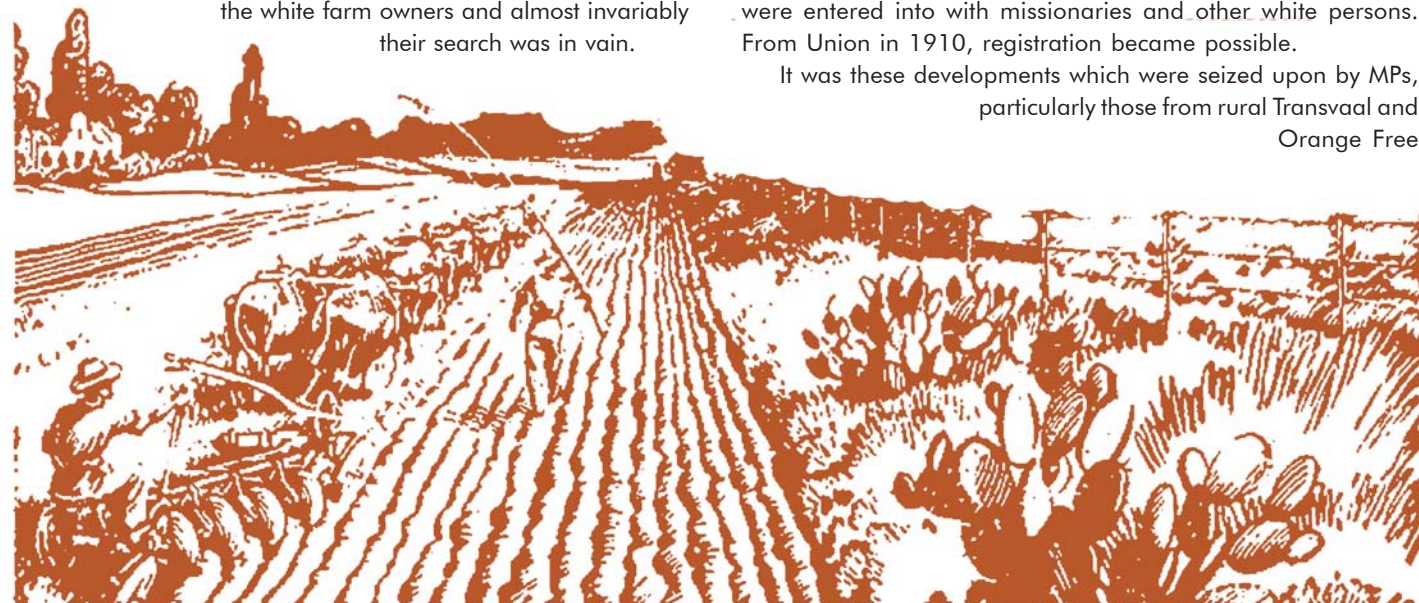
Solomon Tshekeisho Plaatje, teacher, court interpreter, linguist, journalist, author and activist, famously observed in his book *Native Life in South Africa*:¹

'Awaking on Friday morning, June 20, 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth.'

He was referring to the promulgation the previous day of the Natives Land Act 27 of 1913. It was also mid-winter at the time. Plaatje set off first by train and then by bicycle in the bitterly cold first week of July 1913 to observe the impact of the Act. His journey took him, painfully, through the Boshof area close to where he was born and where he had memories of a happy childhood, as well as many other areas. What he found were scenes of human misery, replicated wherever he went, as a direct consequence of the Act's promulgation.

Days before the signing of the Act by Lord Gladstone on 16 June 1913 and its promulgation on 19 June 1913, some white farmer owners had already begun to enforce the grim choice posed by the Act on African tenants renting land from them – either you forego your cattle (for most the store of a lifetime's savings) and your crop farming and work for me as my labourer or you leave.

By the first week of July, this trickle had turned to a steady stream. African families, unwilling to exchange their cattle and their independent lifestyles as tenant farmers for a life of enforced labour, joined what Plaatje describes as a 'native trek' in often freezing conditions, in search of sympathetic white farm owners who might be willing to allow them to reestablish their tenant-farming lifestyle. But news of the law travelled fast amongst the white farm owners and almost invariably their search was in vain.



In this article I will examine the circumstances preceding and during the passage of the Act, the ultimate impact of the Act, read with its 'sister act', the Native Trust and Land Act 18 of 1936 and the efforts during the constitutional era to address its pernicious legacy.

Circumstances preceding the Act

Wide-scale dispossession of land from the indigenous communities of South Africa was, of course, not a phenomenon which only began in 1913. The forcible dispossession which went with colonial conquest had already had a massive impact on the distribution of the African population. Economic forces had their own disruptive effect. Taxes forced people to seek wage-paying labour in the towns and cities. Peasant producers lost land when unable to manage their debt. A host of earlier land laws in the Cape and Natal colonies and the Boer republics had also forced African people from their land.²

This notwithstanding, there was a class of close-on a million African tenant farmers who lived and farmed on white-owned land. They did so either as ordinary rent-paying tenants or as share croppers paying half of their crop as rental, or as labour tenants making the labour of family members available for part of the year in return for the use of land for cattle and cultivation. Although they were pejoratively referred to as squatters, in many instances they were prosperous farmers.

A parallel development, particularly in the former Transvaal area, was the purchase of land in freehold title by Africans. Under the old Boer republic, measures had precluded the registration of title in their names, but nominee arrangements were entered into with missionaries and other white persons. From Union in 1910, registration became possible.

It was these developments which were seized upon by MPs, particularly those from rural Transvaal and Orange Free

State constituencies, during the parliamentary session of 1913. A highly misleading statistic was presented to Parliament by the Minister of Lands exaggerating the scale of purchase of land by Africans. Complaints were made by MPs about the 'squatters' doing their own farming and being unwilling to provide labour to white farmers, who were as a result forced to use their own children to work on the farms.

This led to the introduction at short notice to MPs and no notice to the African population, of the Natives Land Bill by the Minister of Native Affairs, JW Sauer. Many opposition MPs spoke out passionately against the Bill.

John X Merriman, former prime minister of the Cape Colony said of the policy of racial separation underlying the Bill, and with some prescience, that '[a] policy more foredoomed to failure in South Africa could not be initiated. It was a policy what would keep South Africa back, perhaps for ever.'

Their warnings went unheeded and the Bill was forced through Parliament with considerable haste.

Effect of the Natives Land Act

The Natives Land Act included a 'Schedule of Native Areas' which essentially listed then existing reserves, locations and farms set aside for occupation by Africans, constituting 8% of the surface area of South Africa. These constituted the 'scheduled native areas'. Section 1 of the Act forbade a 'native' from entering into 'any agreement ... for the purchase, hire, or other acquisition from a person other than a native' of land outside the scheduled native areas, save with the permission of the Governor-General, which for all intents and purposes meant the Minister of Native Affairs.

A corresponding provision, cynically aimed at appeasing the Imperial Government's concern about the discriminatory effect of the Bill, forbade a 'non-native' from acquiring or hiring land from a 'native' inside the scheduled native areas. Agreements entered into in breach of the Act were void and the parties to the agreement were, in terms of section 5, guilty of an offence punishable with a fine or imprisonment of up to six months.

Section 2 of the Act provided for the appointment of a commission which was to report on what areas should be set apart for exclusive use of natives and non-natives respectively. Appeals by opposition MPs at least to delay the implementation of the Act until areas had been set aside pursuant to the recommendations of the commission, to absorb the inevitable displacement which would follow implementation of section 1, fell on deaf ears.

The effect of the Act was to outlaw at least two of the forms of tenancy which had been practised on such a wide scale by African farmers – rental tenancy and share cropping. Labour tenancy, at least in certain areas, persisted. This led to displacement of these classes of tenants on a massive scale, a displacement which has been described as a 'mass removal to nowhere'³



because the commission had yet to report on, let alone provide, the land to be set aside to absorb those displaced by the Act.

Plaatje attempts to lobby the Imperial Government

There had, in the year preceding the passing of the Act, been an important development in African political life. The South African Native National Congress was formed. Plaatje was its first secretary general. Its national executive appointed a delegation, including Plaatje, to travel to Britain to lobby the Imperial Government to use its powers as the colonial government and perceived protector of the rights of the 'native' population, to bring about the repeal or amelioration of the Act. The delegation set sail in mid-1914. Plaatje began working on his book

Native Life in South Africa on board.

The representations to the Imperial Government fell on deaf ears. Europe was about to go to war and the Imperial Government had other matters on its mind. Plaatje records that the Secretary of State 'took notes on nothing, and asked no questions. On every point he had "the assurance of General Botha" to the contrary.'⁴ A hearing before a committee of the British parliament was more sympathetic but there were no concrete results. Plaatje stayed on in London, deciding that he would use his book to appeal to the British public. He published it while still in London in 1916, but to no avail.

The Native Trust and Land Act

The commission envisaged by section 2 of the Natives Land Act was appointed in the form of the Beaumont Commission. It reported in 1916. It recommended the acquisition of an additional seven million hectares for the reserves. The white farmer lobby opposed this. Substantial delays followed. A compromise became possible with the establishment of a coalition government under Hertzog in 1933. Under the Native Trust and Land Act 18 of 1936 ('the Trust Act'), provision was made for the ultimate transfer of 6.2 million hectares of land to the reserves. The *quid pro quo* was the abolition of the limited voting rights which Africans had to that time still retained in the Cape.

Provision for the transfer of a further tranche of land by no means signaled a benevolent piece of legislation. On the contrary, it sought to fine-tune the policy of complete separation and marginalisation of Africans. Section 1 of the Trust Act provided that it was to be read with the Natives Land Act 'as if they formed one Act.' The prohibition on purchase or lease of land persisted, adjusted only to accommodate the 6.2 million hectares added to the reserves. This land was again listed in a schedule euphemistically termed 'released areas.' The land was not immediately available, but rather identified for progressive acquisition by an entity established by section 4 of the Act – the South African Native Trust. The trustee was the Governor-General and later the Minister of Native Affairs. Incumbents included HF Verwoerd.

New weapons were introduced into the arsenal of measures aimed at eliminating African ownership or occupation of land outside the reserves. These included section 13(2) which provided for the expropriation of land held in freehold title by Africans in areas which were now considered exclusively white areas under the two Acts. Official policy termed such land a 'black spot' and an expropriation under this provision was the first legislative step in the forced removal of many such African land owners.

The obsession with eradication of African occupation of white-owned land continued. Some Africans continued to occupy white-owned land without paying rent or being employed, often simply because they had been on the land for generations and their presence tolerated. Chapter IV of the Act introduced a new regime where they were defined as squatters and had to be registered by the land owner with the native commissioner. Each year the registration fee would increase and no such registration could last longer than 30 years. If they were not registered, their occupation constituted an offence and upon conviction they were liable in terms of section 26(5) to summary removal.

Labour tenants also had to be registered and a 6d registration fee was payable. A land owner could be summoned to a hearing to justify the number of labour tenants on his or her farm. Failing justification, the number of labour tenants registered for the farm would be reduced and continued occupation by the remainder would similarly become unlawful and subject to summary removal. Not content with this measure, the apartheid government introduced an amendment in 1964⁵ which provided for the complete abolition of labour tenancy by proclamation, area by area. Once again, labour tenants were presented with a stark choice. Become full time servants of the white land owner, if he was willing, or leave for the bantustans.

Intensification of forced removals

Apart from the forced removals which followed immediately upon their promulgation, these two Acts, directly and indirectly, formed the basis for a massive and intensified campaign of forced removals by the apartheid government during the period from 1960 to 1983, when more than 3.4 million people were forcibly removed. This figure includes –

- 1 129 000 people removed as a result of evictions from farms, a direct consequence of the two Acts;
- 614 000 people removed as a result of black spot removal and homeland consolidation, a direct consequence of the two Acts;
- 730 000 people removed under the pass laws from major metropolitan areas (smaller towns' statistics could not be located), a direct consequence of the two Acts and their notion that the scheduled and released areas were the only permanent homes for Africans);
- 130 000 people removed from urban informal settlements a direct consequence of the two Acts, along with laws curbing 'illegal squatting';
- 860 400 people removed as a result of the group areas legislation, an indirect consequence of the two Acts which operated alongside the group areas legislation to dissect the country spatially along racial lines.⁶ Occupants or owners of land whose skin colour did not match the group for which the land was designated had to go.

It is difficult to comprehend the scale of human suffering

which underlies these stark statistics. Some sense of it is captured in the following extract written in 1983:

'Jamangile Tsotsobe's story [of forced removal] is not unique. There are millions of people like him ... One in five South Africans has shared or will share Tsotsobe's fate. ...

In 1969 Cosmas Desmond set out to 'illustrate what apartheid means in practice' in his book *The Discarded People*. Between May and September 1969 he travelled the length and breadth of South Africa in an attempt to document removals. His book, which described the horror of the policy, resulted in an international outcry...⁷ The following] is a quote from Desmond's opening paragraph:

'I have seen the bewilderment of simple rural people when they are told that they must leave their homes where they have lived for generations and go to a strange place. I have heard their cries of helplessness and resignation and their pleas for help. I have seen the sufferings of whole families living in a tent or a tiny tin hut. Of children sick with typhoid, or their bodies emaciated with malnutrition and even dying of plain starvation.

The enormity of relocation only hits the traveler when driving through the bantustans. Relocation sites are designed to be out of sight from all national roads...

In South Africa removals are part of the way of life of the black majority. Dispossession and exclusion lie at the heart of apartheid.'⁷

Remedies provided in the constitutional era

Addressing the legacy of colonial and apartheid land laws formed a focus of the negotiations preceding both the interim and the final constitutions. The call to afford property rights constitutional protection was met with a corresponding demand to address the fate of those whose property rights had been trampled on during the colonial and apartheid eras. Understandably there were demands to remedy dispossession going back to the earliest stages of colonisation. However, the constitution-making process was one of compromise.

Acknowledging the centrality of its role in the dispossession of land rights the date settled on in the constitutional negotiations was the date of promulgation of the Natives Land Act: 19 June 1913. A remedy was to be afforded only in respect of dispossessions of land rights after that date. An Act of Parliament was to flesh out the remedy and the process for enforcing it. The constitutional formulation of the remedy in the final Constitution is to be found in section 25(7) which provides:

'(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.'

The Act envisaged by the successive constitutions is the Restitution of Land Rights Act 22 of 1994. It was one of the earliest laws of the first democratic Parliament. It establishes a Commission on Restitution of Land Rights to receive, investigate and seek to negotiate the settlement of, land claims. It establishes the Land Claims Court to adjudicate claims which are not capable of settlement. Remedies include the restoration of land dispossessed, taking into account the feasibility of restoration, the provision of alternative State-owned land and compensation. The cut-off date

for the lodging of claims was 31 December 1998. Two other components of land reform also require mention, because they also seek to remedy consequences of the Natives Land Act. Each has a basis in section 25 of the Constitution. The first is land redistribution.⁸ It seeks to acquire land and redistribute it to formerly disadvantaged communities, to address imbalances in land ownership. The land need not have been the subject matter of a dispossession. The second is land tenure reform.⁹ It requires legislative measures to address insecure tenure which is the consequence of racial discrimination.

In the year which marks the 100th anniversary of the Natives Land Act it is appropriate to reflect on whether the remedies afforded by the Constitution and the Restitution Act have proven adequate. The statistics provide some of the answer. Land claims numbering 79 696 in total were lodged before the cut-off date. Of these, 76 705 have been settled. Of these claims, 71 000 were settled on the basis of the payment of financial compensation, totaling some R6.5 billion. Land totaling 2,87 million hectares has been restored at a cost of R13.9 billion.¹⁰ The amount of land restored pursuant to orders of the Land Claims Court was not available, nor was the exact number of claims finalised through court proceedings. Certainly there are many complex land claims still awaiting processing by the commission and adjudication by the court.

A further 3.93 million hectares of land has apparently been transferred through the land redistribution program, giving a combined total of land transferred through land reform of 6.8 million hectares.¹¹ That represents 5.6% of the land surface of South Africa. Sadly, that figure indicates the relatively small impact which land reform has had in addressing the legacy of the Natives Land Act and the preceding land dispossession which it cemented. Undoing the impact of centuries of racial discrimination in relation to land rights has proven to be a profoundly difficult task. Why is this so?

The land for restoration has proven expensive. Soon after the commencement of the restitution process a view was taken that the settlement of claims in preference to their adjudication through the Land Claims Court would speed up the process. The court's powers of scrutiny over land claim settlements were largely removed and the commission took upon itself the role of attempting to finalise claims in this way. This policy is what the government terms the 'willing seller – willing buyer' policy. Unfortunately this may have been a costly mistake as the statistical evidence suggests that the price of land acquired through the restitution process has proven excessive.¹²

Sellers, knowing the determination to arrive at settlement have driven hard bargains. This is unfortunate, as the Land Claims Court has always had the power to order expropriation and to determine the amount of just and equitable compensation in terms of the criteria in section 25(3) of the Constitution where a price could not be agreed upon. Greater use of this power may well have reduced the cost of acquiring the land for restoration substantially. Realisation of the flawed nature of the existing approach has been signaled by recent government announcements that it is abandoning the 'willing seller–willing buyer' policy.¹³


Successful claimants have also in many instances been unable to make productive use of the land restored to them. This has been so despite the payment of grants in the amount of some R4 billion to support restoration. The issue is complex. Families

were robbed of their farming skills through the process of dispossession. The nature of agricultural enterprise has changed dramatically in recent times. Claimants need significant agricultural extension services, which do not appear to be available. Communities have grown since their original dispossession. Sharing the proceeds of a farming enterprise equally among community members may leave income so small that the incentives for production are absent.

Recent decisions of the courts have also tended significantly to reduce the prospects of land being restored. If the land to be restored is considered to have been developed so as to make it substantially more valuable than it was upon dispossession, restoration may be deemed 'financially unfeasible'. Increasingly, the courts will enquire into the claimant's capacity to use the land productively before restoring it. Victims of historical racial discrimination may well be at a disadvantage in proving their ability to comply.¹⁴

Another limiting factor in attaining a racial balance in land distribution has been the extent to which claimants have opted for financial compensation instead of land. As was recently observed, had they been forced to accept land, an additional 1.3 million hectares might have been restored.¹⁵ But it is perfectly understandable that claimants opt for financial compensation rather than restoration of land from which they or their families may have been separated for decades. Reestablishing a life on a restored rural property is a daunting prospect.

Conclusion

The legacy of the Natives Land Act has proven to be a pernicious and enduring one. Remedies to address that legacy effectively have proven elusive. But the sheer scale of the injustice done demands that the endeavor to find just solutions must continue. We ignore that demand at our peril. 

Endnotes

- ¹ Published by PS King, London in 1916. The work focuses comprehensively on the circumstances surrounding the passing of the Natives Land Act and on its terrible impact. It forms the source of most of the information on this aspect in this article. It is a powerful and compelling account of the injustice inflicted by the statute.
- ² C Bundy *Land, Law and Power: Forced Removals in Historical Context in Murray and O'Regan No Place to Rest: Forced Removals and the Law in South Africa* (1990 OUP) pp4-5.
- ³ L Platzky and C Walker *The Surplus People: Forced Removals in South Africa* (1985 Ravan Press)
- ⁴ Chapter 16.
- ⁵ Section 27bis(1) introduced by section 22 of the Bantu Laws Amendment Act 42 of 1964.
- ⁶ *The Surplus People* above at p 10.
- ⁷ *The Surplus People* above at p 7.
- ⁸ Section 25(4)(a) and 25(5) of the Constitution.
- ⁹ Section 25(6) and (9) of the Constitution.
- ¹⁰ Statistics provided by the Department of Rural Development and Land Reform.
- ¹¹ *Business Day* 22 Jan 2013.
- ¹² *Business Day* 21 Feb 2013.
- ¹³ For example, *Business Day* 21 Feb 2013. Incidentally, the use of the term 'willing seller-willing buyer' by the authorities in this context is unfortunate – it is a legal term with a completely different meaning from that intended by the authorities. It relates to the criterion for determination of the market value of land – see LAWSA 2nd edition Vol 30 Paras 202-203. References to the abandonment of the 'willing seller-willing buyer' policy is sometimes understood to suggest an abandonment and repeal of the criterion of market value in the determination of just and equitable compensation in section 25(3) of the Constitution.
- ¹⁴ See *Mhlanganisweni Community v Minister of Rural Development and Land Reform and Others* (LCC 156/2009) [2012] ZALCC (19 April 2012) and the cases referred to in that judgment.
- ¹⁵ *Business Day* 22 Jan 2013.