

Cramond people want land rights

IN July this year about 200 people were evicted from a Cramond farm and forced to live in Copesville and Northdale in Pietermaritzburg because they had nowhere else to go. The SAPPI forestry company is one of the landowners said to have evicted farm labour tenants.

Now the tenants and members of the Cramond community are demanding that evictions stop and that a forum be established to address the land needs of people in the area.

On October 2 1993 the community handed a memorandum to the local station commander outlining their demands.

The community is demanding:

- An end to harassment and unjust treatment from farmers and the local authorities
- A moratorium on eviction on all the farms and that those people who have been evicted be allowed to return to their place of birth.
- That a negotiating forum be established to discuss evictions, trespassing charges, lost livestock and alternative land for the community, among other things. The forum should comprise the local police station commander, representatives from the Department of Regional



and Land Affairs, the Natal Provincial Administration, local white farmers, SAPPI, the community and AFRA

- The Department of Regional and Land Affairs provide funds for the purchase of alternative land in Albert Falls for the community.

The station commander agreed to make sure that all players mentioned in the memorandum got a copy of

the memorandum and that the community gets a reply by the end of October.

Meanwhile, the Cramond magistrate has written to the community in response to their memorandum. In his letter, dated October 11, he urged them to bring any complaints of unjust treatment to his immediate attention.

He said he had no knowledge of any evictions at SAPPI, trespass charges or

livestock impounding, until he had received the community's memorandum, and that the evictions had not been on orders from his office.

He assured the community that he had forwarded their memorandum to all the parties listed in it and that he had asked them to respond to him on its contents as soon as possible.

A small march with big effect...

BEHIND homemade banners calling for land to the landless and an end to farm evictions, about 100 residents marched from the local school to the police station in the little town of Cramond near New Hanover in the Natal midlands on October 2 1993.

March organisers expected more people but said that a local farmer had earlier that morning been driving around the farms and many people had stayed home fearing what could happen if they joined this public expression of what people wanted.

Although the march was small and largely unobserved, except for the few vehicles which passed it on the Greytown Road, its participants were as inspired as the thousands who have so often marched through the cities of South Africa and brought traffic and work to a halt with their display of solidarity.

Late arrivals ran forward to join and old men and women took turns with

youths to hold the banners tied to rough sticks.

And it was a significant event for the town and its people. How many other times have ordinary people been able to capture the respectful attention of the station commander and other policemen who came to listen, at first somewhat stony faced and then with greater interest, to their problems and demands? How many times before this have these people been able to sing and chant their desires in the tiny town? When before has the station commander invited in representatives from residents on the farms to make arrangements and undertakings with them about sorting out the problems raised?

As people outside the police station waited for their representatives to reappear and together counted the months to South Africa's first democratic election, it seemed for a while that freedom had indeed come, even to a little town like Cramond.

AFRA News readership survey complete

AFRA thanks the readers who completed and sent in their survey questionnaires.

About 10% of readers replied to the survey and in general seemed to be satisfied with AFRA News as it is currently produced.

We will be publishing detailed results of readers' responses to the questionnaire in the next issue of AFRA News.

Land needs versus conservation

Will the Thukela Biosphere reconcile the two?

In AFRA News number 22 we looked at what the Thukela biosphere reserve could mean for different groups affected by the initiative. Here we report on recent negotiations between farmers involved in the initiative and communities who will be affected .



THE Thukela biosphere reserve presently involves 36 farmers who own about 65 000 hectares of land. The Natal Parks Board and the farmers involved in the initiative have emphasised the possible benefits for rural black communities, such as employment opportunities and related to this, employment conditions and security of tenure. But the communities themselves were deeply mistrustful of what the reserve could mean. They believed there would be strong pressure on them to drastically reduce their livestock, that evictions would increase from farms in the Biosphere and that unemployment could increase because eco-tourism would not provide enough jobs. The communities who will be affected by the biosphere include the black freehold areas of Cornfields and Tembalihle who were officially reprieved from forced removal in 1990, a labour tenant community in the Colenso District who is currently in the process of buying part of the farm on which they have lived all their lives and labour tenants and farmworkers living on white-owned farms in and around the biosphere area.

What is a biosphere?

ESSENTIALLY, it is a conservation cooperative where membership is voluntary and people are seen as integral in the conservation process. The concept is based on cooperative management, protection of wildlife and the environment and community involvement. A typical biosphere consists of three main zones:

- a core area which is essentially a wilderness area and where the environment is formally protected
- a buffer area consisting of a protected nature or game reserve
- a transitional area which surrounds the buffer area and where land is used for agricultural, commercial tourism and development

The biosphere idea had its roots in Russia about 22 years ago. Today there are about 270 biosphere reserves spread across 60 countries. Most of these are based on existing national parks or other kinds of protected areas. The concept has been accepted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and a global network of biospheres is registered under UNESCO.

In South Africa, biospheres are still largely a Natal phenomenon, introduced by the Natal Parks Board. There are biosphere reserves at Bulwer, Kamberg, Pongolapoort, Underberg, Coleford and Cobham state forest.

Meeting the needs of people and the environment

A process to address communities fears and needs and those of the biosphere farmers started in August with a meeting between the biosphere farmers and the communities of Cornfields and Tembalihle. The key issue to emerge from the meeting was the communities' need for more land and the biosphere farmers willingness to look at making this land available.

The farmers also offered the communities help with farming methods, livestock marketing and water provision. Water is a particularly pressing problem at Tembalihle where the recent drought has dried up existing water sources except for a single borehole.

Farmers support communities getting more land

Subsequent meetings between the communities' representatives and the biosphere saw agreement on the communities buying 11 farms from the biosphere farmers.

The communities will use money recently set aside by the government for land purchases. The money, said to be about R25 million for 1993, was set aside in terms of the Provision of Certain Land For Settlement Act 126 of 1993. The government will pay a subsidy of up to 80% of the land's price. The community will be expected to pay 20% - 5% immediately and the remaining 15% over a period of five years.

Addressing the needs of labour tenants and farmworkers

While resolution of the problems between the biosphere farmers and black landowners seems imminent, addressing the larger problems of labour tenants and farmworkers is only beginning.

At a meeting between the Natal Parks Board, a representative of the biosphere farmers and Colenso labour tenants in October about 150 people squeezed into the classroom of a school in Inkanyezi to state their fears and see what assurances they could get.

"Will we be staying with wild animals? If so, how will we live with these wild animals? What kind of wild animals will there be? Why were we not consulted earlier? Is the new South Africa going to give preference to wild animals over people? We can't be exploited anymore. We want jobs but we don't know that a game reserve is necessarily the best way to create jobs. We feel that we're being forced to accept the biosphere. If we say no, what will happen? Can we say no?" These were just some of the many questions and fears which labour tenants put to Greg Laws of the Natal Parks Board and Chris Wilkinson of the biosphere reserve.

A man from Weenen told of his own experiences when the Weenen reserve was established.

"When the Parks Board was setting up the Weenen reserve," he said, "we heard the same promises of the reserve being people-centred. Then there were also meetings, parties,

to explain what the reserve would mean for people already living in the area where the reserve was going to be. But tell me, how many people are there in the reserve today? I'll tell you. There are none. They have all been forced to relocation sites in KwaZulu. A few days after the parties, after the meetings the same people who had given us all those promises came in camouflage to torch our houses. Even now, as we discuss what will happen with this new biosphere reserve, there are members of the Natal Parks Board going around feeding poisoned meat to dogs. What does the Parks Board have to say about this. These are not stories I got second hand. These are things I have seen with my own eyes."

In reply to this seemingly damning tale, Greg Laws of the Natal Parks Board and Chris Wilkinson of the biosphere reserve were at pains to reassure the tenants that this time things would be different.

Biosphere promises new approach to conservation

Dealing first with the accusation that members of the Parks Board were poisoning tenants dogs, Mr Laws promised that such allegations would be investigated. Regarding the account of what had happened when the Weenen reserve was set up, he said that the biosphere was an attempt by the Parks Board to change what had been wrong about conservation in the past. He said the Parks Board were now trying to help people who lived near the Weenen reserve with development projects and he invited the tenants to elect

representatives to visit these areas, courtesy of the Natal Parks Board so that they could hear the people's views themselves about what was now happening around the Weenen reserve.

Mr Wilkinson told the tenants that the biosphere would mean there would be more jobs than there were now, not less. He said if the biosphere was to work then there would have to be benefits for everyone living in the area. It was not biosphere policy to evict people, he said. If a member of the biosphere did want to evict tenants, then the biosphere would try to mediate on the issue.

The animals which would be brought into the biosphere would be those which had been in the area before - leopard, crocodiles, hyena and rhino. The farmers and people would have to cooperate around secure housing and fencing so that people would feel secure.

Tenants agree to liaise with biosphere farmers

At the end of the meeting, tenants seemed less suspicious than when they had arrived. They agreed to set up a liaison committee with the biosphere farmers to deal with any problems that may arise between farmers and tenants. A similar meeting will be held with tenants in Weenen on October 23.

If similar cooperation can be achieved between these tenants as seems to be happening with black landowners, then there is a real possibility that the biosphere could mean a better life for all people in the region.

Cornfields and Tembalihle buy more land

AS part of negotiations around the establishment of the Thukela biosphere reserve, the black freehold communities have succeeded in getting access to more land.

Farmers involved in the biosphere agreed to sell 11 farms surrounding the two communities' existing land. This will add 8 531 hectares to the existing 842 hectares which the two communities own.

The 11 farms cost an average of R628.52 a hectare and a total of R5 362 306.90. The government will pay 80% of this.

The 442 families of Cornfields will have to pay an initial R322.73 each and the 267 families of Tembalihle will each have to pay R469.92.

The families in the two communities will also have to repay between R289.95 and R193.64 each per year for the next five years.

The farms were valued by independent land valuers, SA Farm Consultants (Pty) Ltd, and were generally found to be well-developed and in good condition agriculturally. Only four of the 11 farms were found to have been overgrazed.

The average value per hectare which SA Farm Consultants placed on the farms was R655 a hectare.

What price

THE Natal communities of Roosboom and Charlestown had their land returned in December 1992. But instead of returning their title deeds, the government has demanded that these communities pay back the "compensation" the government gave them when they were removed. If they do not, they will not get back their title to the land. And other communities who were "compensated" when they were removed and who get back their land are likely to face the same problem.

The Alcockspruit community of the Dundee District in Natal put in a land claim to the Advisory Commission on Land Allocation in February 1993. So far the Commission has not made public its recommendation about the claim. But in a confidential document to the state president, the Commission recommended that: "Ownership be restored to the former landowners who are able to prove their ownership on the date of expropriation (but that) the Commission is of the opinion that state owned land should not be disposed of without payment. In view of the fact that the community was compensated for their land, the value of the properties to be returned to the former owners should be determined by the Board on Land Affairs or the former owners should be held liable to repay the compensation

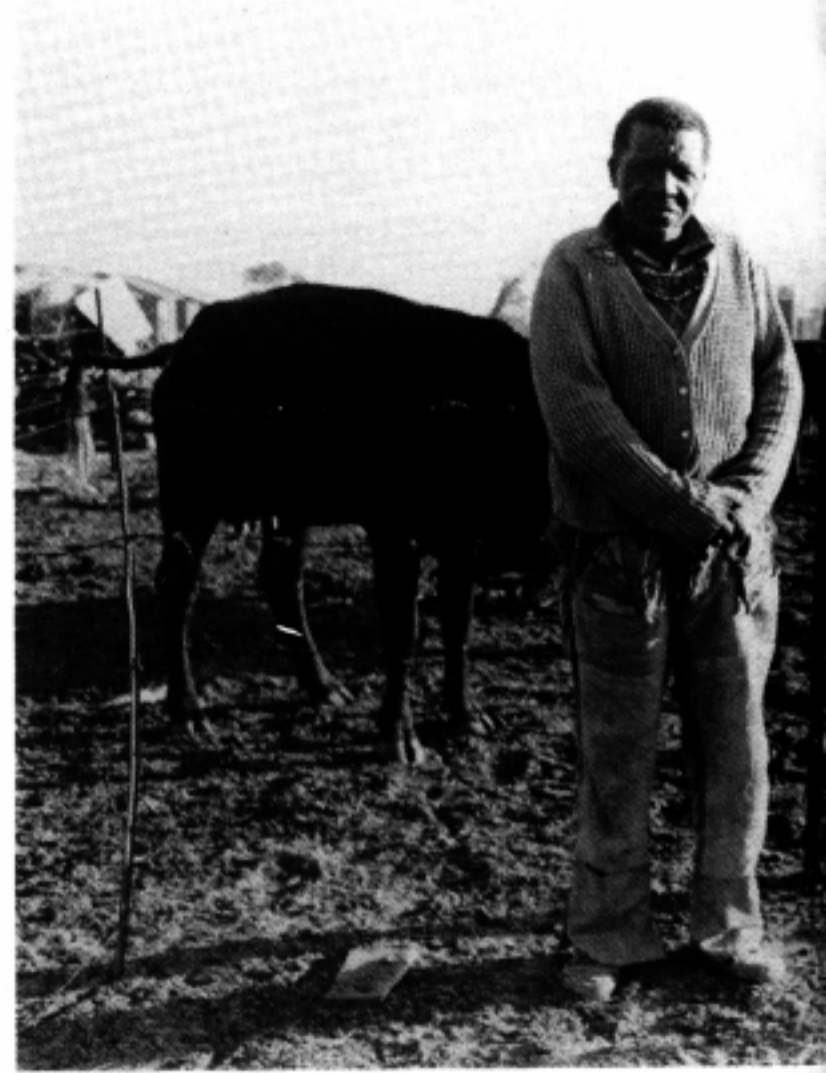
they received," the document said.

Erik Buiten, Chief Director, Land Reform in the Department of Regional and Land Affairs, said the government had to be sensitive to specific cases and had to think in terms of the consequences for other rural and urban communities with land claims.

"Let's take the example of Roosboom in Natal and the Mfengu community in the Eastern Cape," he said. "The Mfengu received almost no compensation. Roosboom landowners received monetary compensation and alternate land. Roosboom got about 964 hectares and about R360 000 for improvements. Only two families at Roosboom did not accept monetary or land compensation.

"Communities, such as the Mfengu, might say that if Roosboom gets back its land for free, then they should get back their land and some extra, because they were not compensated when they were removed. It is for this reason that we can't say that all communities who were removed should get back their land for free. Different communities were disadvantaged in different ways. We cannot treat them all the same," he said.

Mr Mashwaba Msizi, coordinator of the Tsitsikama Exile Association, which represents the Mfengu people, dismissed Mr Buiten's justification. "It's nonsense," he said, "that communities who were



removed and who get back their land should repay compensation the government may have given them before they can get back their title deeds. People suffered during the removals. Some people died from the shock, others suffered starvation because they couldn't get jobs to feed their families. What is the government going to do about this suffering? Charlestown and Roosboom and other forcibly removed communities who get back their land should also get back their title, without having to repay compensation they may have got at the time of their removal. If anything, the communities who were forcibly removed should be compensated for their suffering. People may get back their land but they will also have to re-establish themselves afresh on that land," he said.

restoration?



Joanne Yawitch, Director of the National Land Committee, pointed out that there were two aspects to the issue: a moral one and an economic one.

"Morally, it is wrong for the government to demand back compensation it may have paid to people who it forcibly removed.

"Economically, if the government wants to insist on this repayment, then it should also be prepared to repay communities what they lost through forced removal. Those communities who were compensated with other land, generally got land which was inferior. They were also not compensated for the long-term productive value of what they lost. If a proper costing was done of what forced removal cost the communities concerned, this would probably be far higher than the 'compensation' which

communities may have received."

A government official who did not want to be identified said he repaying the compensation could be a futile exercise. "The costs of recovering some of the amounts may well be more than the actual compensation paid for the land when it was expropriated," he said.

The Legal Resources Centre's (LRC) Geoff Budlender felt the issue had to be considered in terms of the broad principle of restoration. "Restoration means making good the loss people suffered and in doing so, we need to take into account what people received when they were removed, what they lost and what they get back. In some cases of restoration, communities who get back their land may have to repay the compensation they received. It is important that there be fairness and consistency in the restoration process," he said.

Henk Smit of the LRC in Cape Town felt that it would be problematic for a future land reform process if non-payment of compensation was adopted as a principle. He said communities faced with the prospect of having to repay compensation could suggest that such payment be made affordable to them and that the government also help the community to re-establish itself by providing a start-up grant for development.

In Charlestown the Development and Services Board (DSB) has tried to defuse the issue. In a letter to the community in September, the DSB Chief Executive said the compensation refund would only be for the value of the land at the time of expropriation.

"The money refunded would not be paid to the state, but to the Development and Services Board, which would use it for the development and improvement of the area. Such funds would not be used in any other area. In order to assist anyone who may experience difficulty in finding the full amount of the refund at short notice, it is hoped to arrive at an arrangement satisfactory to all parties whereby the refund could be paid in instalments," the letter said. Charlestown landowners got between R250 and R350 for their land.

In its options for land reform, the World Bank suggests that white property owners who were expropriated through apartheid policies be excluded from the land claims process, since they were adequately compensated and had access to the political process denied to black victims of apartheid. They also recommend that black claimants should not pay for land returned to them, because they are regaining what rightfully belongs to them.

Land Rights Update

Baynesfield community plans reoccupation

THE Baynesfield Residents' Association, representing former labour tenants who were evicted from the estate in 1974 told the Baynesfield Board of Administration that former tenants and their families would reoccupy the land on November 13 1993 if they do not get a positive answer to their request to return.

In a letter to the Board, Mr Bhengu, a member of the Baynesfield Residents' Committee said that the community had written a number of letters to the Board in the past, informing them of the community's intention to return to Baynesfield. "We would like to inform the Board that we are still determined as ever to go back to Baynesfield. Our fields at Baynesfield await to be ploughed and we will plough them...We will return to where we were removed unless the Board comes up with a positive answer to reach us by 30 October 1993," the letter said.

Commission accepts DBSA proposals for Impendle development

THE Commission for Land Allocation (formerly the Advisory Commission on Land Allocation) has accepted proposals from the Development Bank of South Africa (DBSA) for future development of about 30 000 hectares of trust land in Impendle.

The DBSA proposes that a mixed settlement model be developed which would involve food plots, market gardens, farmer support actions, commercial farming, small commercial farming, commercial and small industry activities and social welfare projects.

There would also be local institution building to involve target groups in decision-making through representative organisations, for example, a food plot association.

Development of the area should be in terms of the following principles:

- sustainability
- security of tenure
- no forced resettlement or removal of local inhabitants
- minimal dislocation of the local and surrounding communities
- maximum local involvement and agreement on planning and development
- if economic benefits exceed economic costs, high potential land should be used for agriculture
- development proposals should enhance physical and economic linkages with surrounding

communities and other sectoral activities

The DBSA identified several stakeholders who should influence the development vision for the area. Among these are former farm labourers, the Department of Regional and Land Affairs, the Department of Agriculture, the KwaZulu Department of Agriculture and Forestry, local tribal authorities, the ANC, Inkatha, neighbouring communities, the Natal Agricultural Union and white farmers.

The communities of Camden and Compensation with whom AFRA works and who made a land claim on the Impendle trust land are in the process of discussing the DBSA's proposal and meetings have been arranged where they will put forward their views to the DBSA.

Charlestown sets date for return to land

ON November 7 and 8 the first Charlestown residents who were forcibly removed from 1975 to 1978 will be returning to their land.

The community got back their land in December 1992 after several years of struggling to have it returned. Among others activities, was an attempt to reoccupy their land in 1991. They were prevented from doing so by a large contingent of police.

In August 1992, the government-appointed Commission on Land Allocation (COLA) held a public hearing where the community presented their land claim. At the end of the year, Charlestown was one of only two forcibly

removed rural communities who got their land back as a result of the Commission's recommendation to the state president.

Mooibank labour tenants and Mondi close to settlement?

NEGOTIATIONS between Mondi Forests and labour tenants who have lived all their lives on the Louwsberg farm of Mooibank, which Mondi bought in 1990, seem close to settlement.

When Mondi bought the farm, it tried to evict all the tenants so that it could establish forests on the land. It managed to persuade some of the tenant families to leave, but 14 families refused to move.

Despite, their uncertain position, these tenants resisted eviction threats and cattle impounding and eventually negotiations began around tenants' demand that they be allowed to remain on the portion of the farm which they had occupied and used for generations.

Mondi suggested that they move to Wonderboom, another of its properties in the Louwsberg area. For almost a year, negotiations have failed to break the deadlock around Mondi's insistence that the tenants move to Wonderboom and the tenants' tenacious determination to remain at Mooibank.

Recently, Mondi agreed to drop its Wonderboom option and to allow tenants to remain at Mooibank. What remains to be settled is the basis upon which tenants will remain there - will they have to buy their portion of Mooibank or will it be allocated to them.

In a letter to AFRA in October, Mondi said it did not want the issue of payment for the tenants' portion to hold up negotiations. A further outstanding issue is the size of the portion which the families should be allotted. Mondi has suggested that this be 150 hectares.

The tenants say this is inadequate for grazing and cultivation and that the boundaries Mondi has proposed could mean that eight of the 14 families would have to move.

They say that before Mondi bought the farm in 1990 they were able to grow their own food and are not been able to do so now because Mondi has prevented their access to arable lands. In response, Mondi has suggested the tenants have gardens instead.

The tenants and Mondi will be meeting on October 28 to address these issues.

Commission on Land Allocation calls for claims on Natal state land

THAT it works at a snail's pace has been one of the grievances which land claiming communities have had about the Commission on Land Allocation (COLA).

Only two forcibly removed Natal communities who made land claim submissions to COLA were told that they would get back their land.

But the communities of Roosboom and Charlestown have not had ownership of their land restored.

Others, such as the AmaHlubi community of Estcourt and the Alcockspruit community of

Dundee, have had public hearings but no response to their claims. These delays in settling communities' land claims have resulted in many problems, such as land invasions from other landless people.

Despite its apparent inability to deal effectively with the relatively uncomplicated, claims which have come to it from land claiming communities, the Commission has now called for people who may have land claims or who may be affected by land claims on 190 pieces of state land in Natal to make submissions.

The land is in the seven districts of Alfred, Eshowe, Ingwavuma, Ixopo, Port Shepstone, Umzinto and Vryheid.

Written submissions must reach the Commission by November 30 and copies of these will be available after that. The Commission said it would call public hearings where verbal submissions could be made.

KwaZulu land deal on hold?

AN agreement between the KwaZulu and South African governments was concluded in August 1993 which could effectively give the KwaZulu government joint administrative control over about 500 000 hectares of state-owned land in Natal.

The announcement of the deal drew condemnation from newspapers and non-government and political organisations, who saw the move as an attempt to use the sensitive issue of land as a political football.

Several rural communities who are part of a national campaign for the restoration of land also rejected the deal. And the Goldstone Commission recommended that such land deals be stopped, on the grounds that they could spark violent conflict over land.

This seems to have forced an unofficial halting of implementation of substantial parts of the deal.

A further concession is the agreement to retain townships under South African administration. Imbali, Edendale, Inanda, Groutville, Itshelejuba, Hlabisa, Somkele, Nkandla and Nongoma will be administered by the Natal Provincial Administration or other South African government departments.

Government sources have admitted that the deal was politically motivated. They also admitted that it would be difficult to implement because of the possible divisions it could cause amongst communities occupying the land in question, as well as implications it could have on the current transitional process. A source said that

he doubted that any of the land would actually be jointly administered and that nothing was presently being planned regarding this. He said that to his knowledge land was being transferred to "tribes" in Inanda and Molweni, near Pinetown, as compensatory land for that which they had lost when the Inanda Dam was built. Nature reserves which were already effectively administered by KwaZulu would be jointly administered.

Some of the land forming part of the deal with KwaZulu also falls under the consideration of the Advisory Commission on Land Allocation, a body which the government appointed in 1991 to deal with land allocation as part of its land reform initiatives.

What the agreement said . . .

IN terms of the agreement the KwaZulu government could jointly administer about 500 000 hectares of state land in Natal.

Ownership of some of the land could be transferred to the KwaZulu Finance and Development Corporation, the KwaZulu Conservation Trust and the KwaZulu Monument Council.

Ownership of traditional rural tribal land may be transferred to tribes and tribal authorities.

Developed land may be leased or sold to farmers jointly selected by Pretoria and the KwaZulu authorities.

Some land may be given to tribes and tribal authorities as compensation for land taken away from them. Some land, such as townships, will

remain under South Africa and will be administered by through the Natal Provincial Administration.

A technical committee made up of the Department of Regional and Land Affairs, the Department of Agriculture, KwaZulu and the Natal Provincial Administration would identify beneficiaries to the land and monitor transfer of the land to them.

Property rights debate rages on

THE hotly disputed property rights clause in the bill of rights for South Africa's interim constitution is in its tenth draft. It is expected that the property rights clause and other outstanding issues of World Trade Centre negotiations will be completed by the second week of November.

Objections to the seventh draft clause from the National Land Committee (NLC), to which AFRA is affiliated, included that:

- it would be disastrous to constitutionally entrench existing property rights as this would entrench the racially discriminatory results of apartheid land laws and policies and colonial conquest. If South Africa had had constitutional protection for property rights during the last century, forced removal and the racial prohibition of rights to own and lease land could never have taken place. Now that

these have resulted in the dispossession of the majority of South Africans and the white ownership of 80% of South Africa's land, the situation is to be set in stone by a constitutional entrenchment of property rights.

- there was unequal treatment of past (black) and present (white) property rights in the proposed clause. On the

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In August 1993, hundreds of representatives from rural communities in South Africa went to the World Trade Centre to protest against the draft property rights clause. Despite assurances from negotiators, the new draft has not addressed their concerns.

one hand, the proposed property clause guaranteed existing property rights and tied expropriation of property to at least market value compensation. On the other hand, the proposed property rights clause made restoration of land to victims of apartheid policies and laws conditional on feasibility.

The new draft has done little to address these concerns. It has:

- broadened property rights to include rights in property
- added that there should be expeditious payment of compensation when rights in property are expropriated in the public interest
- made compensation at market value more explicit and unambiguous

Lawyers, who have been working with the NLC, have warned that the tenth draft clause makes the constitutional right to restoration of land much weaker. If included in the bill of rights, they say, rather than such a bill marking the end of apartheid, it would entrench apartheid's results. And it would not be surprising if many South Africans rejected it.

The provision guaranteeing the right to compensation for expropriation of rights in property will oblige the state to pay compensation if even part of an owner's property rights is taken away. Practically, this would entitle owners to claim compensation if:

- they are prevented from using their property in a way which endangers the environment
- changes in municipal zoning laws, land use and development rights affect

existing land use and development rights of owners

- low income housing is established near to existing residential areas
- the state tries to implement rent control.

The clause stipulating that compensation for expropriation in the public interest should be made expeditiously has traditionally meant that such payment should be made before or simultaneous with expropriation.

Although the judicial interpretation of the phrase "expeditious payment of compensation" has varied, if strictly interpreted, it would mean that deferred compensation is unconstitutional.

In formulating the nature of compensation which should be paid a list of factors which was included in the seventh draft property clause has been dropped.

In the current draft, it is said that compensation should be "just and equitable".

In other countries "just" has been consistently interpreted to mean market value. "Equitable" has been interpreted to mean compensation above market value.

In a leading international case between the Libyan Oil Company and the Libyan government, the word "equitable" was interpreted to mean that the company should be paid the market value of its assets and compensation for future loss of profit.

Although market value compensation would be appropriate in some cases of expropriation, the results of the present formulation of the clause would enrich people who already got

favourable treatment from the state, undermine the constitutional promise of land restoration and make significant land reform impossible.

Ultimately, it could undermine all property rights and place the constitution itself at risk because it attempts to entrench the existing vast inequality in South Africa.

Restoration of land to victims apartheid will depend on whether or not the state is able to effect expeditious and just and equitable compensation to current landowners. If the state cannot, the present owners will retain their land and those who were dispossessed will remain so.

Realistically, there will not be sufficient funds for any substantial land reform, the lawyers argue.

They also point out that a constitutional guarantee that existing holders of property rights will retain these unless the state can meet huge compensation claims, undermines current pragmatic negotiations taking place now.

These are taking place in the context of present owners wanting to stabilise their ownership, recognise the validity of counter-claims on their land and to seek ways of arriving at solutions which involve some sharing of the loss suffered by dispossessed communities.

There are negotiations between farmers and forcibly removed communities, companies are negotiating with long-term labour tenants about how to divide land and share its use and conservation bodies are accepting and recognising pre-existing land rights in conservation reserves.

World Bank's latest options for SA land reform

Here, we present a summary of the World Bank's latest options for land reform in South Africa. Their proposals were part of a conference on land redistribution options, hosted by the Land and Agricultural Policy Centre in October. In future issues of AFRA News we will be carrying responses to these proposals from AFRA and other National Land Committee affiliates. We also welcome responses from our readers.

ON the basis that "greater reliance on smallholder production offers South Africa the chance to realise significant gains in social justice, employment and agricultural potential," the World Bank researchers have proposed a land reform process which involves two main areas of state involvement: land restoration and land redistribution.

Regarding current problems faced by rural communities with whom AFRA works, two aspects of the World Bank proposal are interesting to note.

Firstly, the World Bank proposes that white property owners who were expropriated through apartheid policies be excluded from the land claims process, since they were adequately compensated and had access to the political process denied to black victims of apartheid.

They also recommend that black claimants should not pay for land returned to them, because they are regaining what rightfully belongs to them.

The present government is insisting that black communities who were forcibly removed and who received monetary compensation should repay that compensation when they get back their land.

Secondly, under its redistribution option, the proposal is for a "matching grant scheme" to assist disadvantaged people to get access to agricultural land.

The Bank has suggested that there be a 30% grant, a loan of 50% and a downpayment of 20% from the disadvantaged people concerned.

The present government grant already covers up to 80% of the purchase price of land for disadvantaged rural communities.

Forced removal will qualify for land restoration

The World Bank says that land restoration would involve returning specific parcels of land to people who were unjustly removed through racial land laws or policies.

Land claims which would qualify for inclusion in the land restoration process, they say, should be those acts of dispossession which occurred after the 1913 Native Land Act. This includes three broad categories of forced removal:

- Black spot removals. These involved removal of black people from pockets of black-owned land in "non-Black" rural race zones after the 1913 Land Act and the 1936 Development Trust and Land Act. It was government policy to force people living in these areas to move to one of the self-governing territories or newly "independent" states.

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▼ **World Bank options for land reform**

territories or newly "independent" states. Black spot removals provide the clearest cases for unrestricted restoration.

- Bantustan consolidation removals. The South African government, in cooperation with the national state or self-governing territory, used the National States Constitution Act of 1971 and the Borders of Particular States Extension Act of 1980 to amend the borders of various bantustans and to include in them areas which had previously been excluded. This allowed the bantustan governments to ignore registered property rights which communities may have had and to remove communities from such land under the guise of privatisation.
- Labour tenants and squatters. Most evictions of labour tenants occurred under provisions of the Development Trust and Land Act, until the abolition of labour tenancy in 1979. The situation of labour tenants raises difficult questions about what would be appropriate redress and what compensation, if any, should be paid to the existing owners for loss of part or all of their land. However, the World Bank says, it is essential to recognise the birth right of long-standing occupiers of land. Labour tenants and squatters

who suffered eviction will have a claim to restoration.

The Bank suggests several remedies for this group's claims. If claimants want to continue farming and still live on the land or were only recently evicted, part of the farm may be awarded to them. If there is concern that restoration will lead to unresolved conflict with the legal owners, claimants may get alternative land or monetary compensation. Where there is inadequate evidence about birth right to a particular part of an existing farm, but the claimants want access to land, such claimants should be directed to the redistribution process where they should get priority.

White expropriation excluded from claims process

The Bank argues that white property owners who may have been expropriated through any of these policies would be excluded from the land claims process, on the assumption that they were adequately compensated and had access to the political process denied to the victims of apartheid.

To effect restitution, a speedy and effective land claims mechanism would have to be established, which they say could be either an administrative tribunal or a land claims court.

Speedy process needed

One way to promote speed, is to create commissions which will decide in which category a claim falls. If the land being claimed is state-owned, the commission could make a decision, subject to review by a land claims court.

If land is privately-owned, the commission could make a recommendation to the land claims court for its decision. This would allow the land claims court to focus on difficult cases on appeal and speed up the whole process.

In terms of its restitution model, the World Bank says that people who enter the land claims process will face four possible outcomes to their land problem:

- a land award
- a cash award
- denial of their claim
- referral of their claim to the land redistribution process.

Most land reform will be through redistribution

In terms of the World Bank proposal, most land reform activities will occur under a redistribution programme rather than restoration. They identify a central tension, in designing a land redistribution model, as that between addressing social welfare objectives and promoting productive use of land.

Basic grant to meet welfare needs

Those who qualify for land or aid under welfare objectives of land redistribution, often have little experience in agriculture, the World Bank says. On the other hand, the most experienced and well-qualified farmers often do not qualify to get land under welfare objectives.

To bridge this tension, the Bank suggests that South Africa's land redistribution programme contain a basic grant element and a matching grant element.

The basic grant element would be available to people who meet the requirements for participation in the redistribution programme.

The size of the grant would be enough to pay for a major share of a rural housing site. The size of the grant could also be based on need, rather than be uniform.

Matching grant for access to productive land

To support increased access to land that will lead to its productive use, it is argued that a matching grant option should be added.

Here, those wanting land would provide part of the purchase price as would the redistribution programme.

Advantages of the matching grant scheme, says the World Bank, are that:

- co-payment acts as a self-selection or rationing device and reduces frivolous requests for land from people who are not really interested in living in the rural areas or farming
- co-payment increases incentives for productive and sustainable use of land
- co-payment may encourage thrift and capital accumulation among beneficiaries and familiarity with financial instruments
- co-payment makes it less attractive for the wealthy to claim land, especially if co-payment requirements increase with the amount of land claimed
- the programme will have fewer built-in incentives for arbitrary land allocation or corruption

Disadvantages include:

- inconsistency of co-payment with the belief that the right to land for food and shelter should be free
- low income households and individuals may not be able to afford co-payment and the programme may be accused of elitism.

To reduce this, the Bank suggests that poor beneficiaries be allowed to pay their co-payment portion in kind - in the form of labour or materials for the construction of minimal infrastructure which would be part of the programme.

Making land available

Although the central theme of the land redistribution options put forward is a reliance on market forces to aid acquisition and redistribution, the World Bank says the government must accept ultimate responsibility for the redistribution programme's success.

A critical requirement for a market assisted redistribution programme is that enough land will come on the market and that land prices will not rise above levels matching productivity and profit potential.

The World Bank suggests that these objectives may be met through:

- eliminating policies and programmes that favour large scale agriculture
- selling or directly providing state land to particularly needy beneficiary groups, such as, labour tenants or betterment victims.
- encouraging land owners to sell their land. This can be achieved through a pension scheme which gives them a secure income based on the net worth of their farms, encouraging financial intermediaries to speed up the foreclosure on farms with non-performing loans, the state paying brokers a fee for bringing extra land onto the market.
- limiting the price which beneficiaries.

Should victims of racial land policies pay for land?

The World Bank says that claimants in the restitution process should not have to pay for land because they are regaining what rightfully belongs to them.

They say the question of payment should only arise in the context of land redistribution. Here some form of co-payment from beneficiaries of the redistribution programme is essential.

They argue that if beneficiaries were exempted completely from paying for some part of land redistribution, and current owners and farm creditors were also to be compensated, the state would have to finance 100% of land acquisition costs.

Ultimately, the state would get this from tax revenues, so exacting the whole cost of land redistribution from tax payers. But there would have to be clear limits to taxation or growth of the economy would slow down.

Given the large resource requirements for other social needs, redistributing land on an solely grant basis would mean either drastically reducing numbers of beneficiaries or stretching out the programme over several decades.

Should current landowners be compensated?

If they are compensated at the current market price, some would argue that they have benefitted from apartheid.

Ultimately, a new government will take the decision on this issue but there are several points that might inform its decision, says the World Bank.

Firstly, the current owner is likely to have gained the land in a genuine transaction, as a purchaser in the market.

In such cases, the previous owners were the main beneficiaries of apartheid because many of the privileges associated with apartheid policies would have been capitalised into the current land prices.

Secondly, apartheid policies benefitted much of the white population that had no direct interest in agricultural land.

This includes the providers of agricultural input, marketing and financial services and mining, manufacturing and service sectors which benefitted from the cheap labour and entry restrictions on black groups.

Failure to compensate the current landowners of farmland for the price of land would impose the cost of rural land redistribution on only one group of those who have benefitted from apartheid.

Thirdly, many current landowners are heavily indebted. Confiscation would mean that the loss would be shared between the current landowner and the lender concerned.

A large scale programme of redistribution would bankrupt many of the agricultural lending institutions.

If these institutions are needed to finance the new owners of the future, the new government would have to refinance their losses which relate to confiscation and bankruptcy of the current owners.

So, even if no compensation is paid to current owners, the state would have to "pay" at least for the recoverable farm debt of the farm it takes over.

Fourthly, failure to pay compensation will be politically unacceptable and will be seen as a first step to nationalisation without compensation.

Finally, external investors and South Africans with capital invested abroad are likely to react by reducing their investment in or repatriation of capital to South Africa.

Although there are legitimate reasons to tax the current landowners for their share in apartheid's gains, it would be better to tax the capital gains of the current owner associated with the compensation at market prices or to include payment of the current owners in a broad restitution levy on all wealth, the World Bank says.



South Africa's shares in the World Bank

SOUTH Africa holds 1,7% of World Bank shares. This makes it the Bank's number 14 shareholder in the world and the biggest shareholder in Africa, said Chad Dobson, of the World Bank Information Centre, at a workshop hosted by the Group for Environmental Monitoring (GEM) and the Institute For African Alternatives (IFAA). He said that under a new government, South Africa could occupy the Africa chair at the World Bank. (*New Ground: Number 13, Spring 1993*)

AFRA takes to the air

AFRA recently negotiated for six one hour slots on Radio Zulu where land issues could be discussed. AFRA fieldworkers, S'the Gumbi and Mdu Shabane, took part in these programmes which took the form of phone in chat shows. Radio Zulu has the largest numbers of listeners in South Africa by far - about 5 million. Responses from listeners in general and the communities with whom AFRA works was very encouraging and further

topics may be broadcast in future. The six slots covered:

- an overview of the land question
- land restoration
- a property clause in the bill of rights in the interim constitution
- labour tenants
- the proposal for a land claims court
- the planned community land conference and what communities can do to attend it

Stellenbosch prof says SA should have wealth tax

A WEALTH tax or net assets tax was justified in correcting unusually sharp inequality in wealth in South Africa, said Professor Sampie Terreblanche of the Stellenbosch University's Economics Department. He was speaking at the Eastern Cape Agricultural Union's annual congress.

"The possibility of a land tax and/or confiscation of land has been mentioned at times," he said. "It would to my mind be unreasonable and undefensible to tax one sector of the economy in this way.

"It is beyond doubt that the whites in all sectors of the South African economy have been advantaged as a result of apartheid and discriminating legislation against people of other races.

"Therefore rectifying measures should not only be taken against landowners or the wealthy of one sector. It should be applied on an equal footing to all sectors."

He said the wealth tax could take the form of half or three quarters of a percent per year for about 30 years. To make things simple, he

suggested that the tax be applied to people with assets of R500 000 or more. The annual income from such a tax could be used for a restitution or reconstruction fund and used to support and build up the section of the population that was subject to exploitation and deprivation during the "age of injustice".

A land reform programme could be supported by such a restitution fund, he said. Even if such a tax did not generate huge funds he said its symbolic meaning could not be underestimated.

Although the National Party had admitted in 1992 that a redistribution of political power had become essential, it was a great pity that they had not also had the "necessary historical consciousness or conscience to admit that the redistribution of wealth had become equally necessary", he said.

(*Farmers Weekly: October 3 1993*)

Electoral Act will guarantee access to private property

THE new Electoral Act will override property rights and give political party canvassers and election monitors the right to visit private properties such as farms and mines.

(*Citizen: September 17 1993*)



Development Bank to promote small farmers

THE Development Bank of South Africa (DBSA) has started a multi-million project to promote small farming because they are unhappy about large-scale farming estates which have characterised homeland agriculture. In KaNgwane more than 25 000 farmers are involved in the programme and 30 000 extra jobs have been created.

About R145 million has been set aside for small farmer support, out of a total DBSA loan portfolio of more than R390 million for rural and agricultural investment.

According to the DBSA, small farmer agricultural yields compared favourably with those of commercial farms, but more land had to be made available to small farmers. Apartheid had relegated South Africa's black farmers to marginal land and the current support system for farmers hampered black farmers from buying land in South Africa.

(Sunday Nation: September 19 1993)

Apartheid's chickens continue feathering nests

DESPITE further revelations of bantustan government financial corruption and mismanagement, the National Party government still wants bantustan administrations to stay in place until a new regional deal is negotiated.

In September auditor-general, Henri Kluever disclosed that there was evidence of theft and administrative incompetence, corruption and lack of control in five bantustans.

The auditor-general could not express an audit opinion on the accounts of Lebowa, KaNgwane and KwaNdebele because of irregularities or failure to submit their returns.

In KwaZulu there were "serious shortcomings in the systems of internal checking and control as well as a disturbing failure to adhere to financial regulations and instructions".

There were also a number of unaccounted for missing firearms in the KwaZulu police reaction unit and quartermaster's store and 101 cases of theft and irregularities involving R78 000 worth of firearms and ammunition.

(Sunday Times: September 26 1993 & Financial Mail October 1 1993)

ANC says land reform must go beyond solving forced removal land claims

LAND reform must go beyond settling the particular land claims of victims of forced removal, said the ANC general secretary, Cyril Ramaphosa at a conference organised by the Land and Agricultural Policy Centre in October.

He said that an ANC government would introduce effective measures and a legal process to resolve competing land claims and to ensure that landless people gain access to land on fair terms. Local land committees and a land claims court would be established to achieve equitable settlements which could involve either restoration of land or compensation for its loss. However, this procedure on its own would be inefficient and slow and a broad programme of land redistribution would have more impact, he said. Mr Ramaphosa said that it would be impossible to secure peace and stability or respect for a legal system of property rights if the huge imbalances in land ownership were not addressed. Land reform would also increase productive employment in rural areas and relieve poverty.

(The Star: October 13 1993)