Union Native Land Policy

The coming and the settlement of Europeans in South Africa has resulted in the situation in which some of the land of the country is in the hands of Europeans & some in the hands of Natives. The settlement of the conflicting land claims of Europeans & Natives respectively is one of the major aspects of Union Native Policy.

One of the first elements of control in the situation by the different colonial governments in being in South Africa before the Union was founded was the development of the Location System. This system ~~applied~~ implied that while it was admitted that it was desirable that the country should be opened up for European occupation, certain lands had to be set aside & reserved for Native occupation, where the various native tribes could be relatively secure in their rights to land.

On the other hand the European settlers in the country wanted Native labour with the result that gradually a large number of Natives came to settle on Europeans under varying conditions eg.

(a) some as full time servants (b) some as labour tenants (c) some as ordinary tenants (d) some as "ploughers on shares". The growth of the native population on the European farms was accentuated by (a) the smallness of the locations & the consequent inability of everyone to find sufficient land in the locations (b) the forfeiture of their lands by tribes that had ~~revolt~~ been involved in rebellions against the Government eg. Galeshewe's tribe in British Bechuanaland, Mapoch's Ground in the Transvaal, & in portions of the Ciskei & the Transkei (c) the advancement of the people & the desire of some to own their land by freehold in the same way as Europeans.

In addition to Natives living on European farms, it must be noted that others for the above reason of congestion in the Reserves settled on Crown land as squatters.

The position then at Union as far as Native occupation of land was concerned was that Natives lived on (i) Locations or Reserves (ii) European farms (iii) Crown lands (iv) ~~Native~~ privately owned Native land.

Soon after the Union Parliament decided to regularise the Native land position, and the Native Land Act of 1913 was passed.

~~The~~ The proximate causes for the enactment of this law were

(1) The scarcity of Native labour.

looking around for the reasons for the scarcity of Native labour were believed to be (1) the taking of land by Natives on their own account, hence the necessity for the restriction of the acquisition of land by Natives (2) the bad distribution of farm labourers some farmers having too much some too little, hence the necessity for the limitation of the number of labour tenants squatters on European farms in Crown lands.

(2) European land hunger. Europeans wanted more land for themselves & they could only get this by reducing the size of native locations grazing rights of Natives outside the delimited Reserves & Locations.

(3) The desire to protect Native owners of freehold land from mortgaging it to European unthinkably losing it altogether.

Hertzog The Act proposed to remedy the situation by dividing the whole of South Africa into two kinds of areas those in which Europeans only could have permanent land rights & those in which Natives only could have permanent land rights. The area in which Natives could have such rights were described in a schedule to the Act, the rest of the Union being to be European areas. Natives & Europeans who held lands in the wrong areas were to be ultimately dispossessed by the principle that "no Native could acquire land from a Non-Native outside Native Areas save Non-Native could acquire land from a Native inside a Native area. The purpose of these provisions was to stabilise Native occupation & to control inter-racial transactions.

The area set aside for Native occupation by the Act was 10,440,000 morgen. From the very first it was realised that the scheduled Native areas were too small, especially in view of the future needs of the Native people. Provision was therefore made for the increase of Native areas in two ways

(1) by administrative action in special cases through the Governor-General in person

(2) by the release of European land for native occupation after a Report of a Commission to be appointed under the Act had been made.

In due course the Commission was appointed under the Chairmanship of Sir William Beaumont & in 1916 it reported on the following additions

be made to the Native areas:—

Provincia	Native Areas in Morgen. Scheduled	Beaumont Recommendation	1936 Act Recommendation
Cape	6,107,000	1313055	1616000
Natal	2,997,000	1861680	526000
Transvaal	1232000	5042693	5028000
O.F.S.	74290	148,316	80000.
	10,460·290	8,365,744	7,250,000.

The Beaumont Commission recommendations were presented to Parliament in the Schedule to the Native Affairs Administration Bill of 1917, which apart from providing for these additional native areas recommended a unified system of native Administration in these areas. The land provisions of this Bill were unacceptable to Parliament & four local Councillors were appointed to revise the ~~Bill~~ areas proposed by the Beaumont Commission with a view to their reduction. These revised proposals also failed to find acceptance with the result that the scheme for additional native areas was kept in abeyance, leaving ~~only~~ the Governor-General's discretion as the only method by which Native areas could be increased. In the meantime the 1913 Act was put into operation.

In the Cape Province the application of the Act was declared illegal ultra vires as it interfered with the ~~land~~ acquisition of franchise rights by Natives these (rights being then entrenched by section 35 of the South Africa Act of 1909 (See the case of Thompson & Others vs Kama A.D. 1917 p. 209 & Section 8 of the Natives Land Act of 1913)

Therefore the position arrived at was as follows

(1) The Natives Land Act of 1913 did not apply to the Cape

(2) . . applied to the rest of the Union although its provisions could be varied by the Governor-General in special cases by administrative action.

What was the result of the Act being put into operation in the rest of the Union outside the Cape:—

(1) In Natal, Transvaal & ~~Free State~~ it put a stop to the "plumping on

1. A cannot sue X for a slanderous statement because X made the statement in the House. Proceedings in the House enjoy absolute privilege.

2. Reports of parliamentary proceedings enjoy qualified privilege. In other words in order to succeed A must prove *animus injuriandi* or that the publisher exceeded the limits of qualified privilege by not publishing a fair & accurate report of the proceedings in which the slanderous statement was made. or by showing that the defendant was actuated by some wrong or improper motive i.e. he abused his qualified privilege.

3. English law draws a distinction between libel & slander. The written publication of defamatory words which expose the plaintiff to the hatred, ridicule or contempt of his fellows is defamatory. In regard to spoken words, however, they will not be regarded as defamatory unless they charge the plaintiff with the commission of a crime, or imputes to him a contagious or infectious disease or refer to his office, profession or trade or unless special damage has resulted from their use. In S.A. laws the same principles apply to both written & spoken words. So in this case in English law would be the same as S.A. law of the publication was in writing

4. Again in English law slander of a private individual is not a criminal offence i.e. the publisher cannot be proceeded against criminally if the publication was verbal, but in S.A. law both slander & libel can form the subject of a criminal prosecution.

5. In English law publication must be to a third person.

6. Truth is a good defence to defamation: in S.A. law truth must be for public benefit.

7. Statements are / not legally entitled to publish.

(1) S.A. Statute Law — (i) Indecent or obscene publications (iii) statement containing a prohibited matter
(ii) Any libellous statements (iv) publishing official secrets.

(2) Roman Law — defamatory statements likely to lead to a breach of the public peace.

Union Native Land Policy

Union Native Land Policy is laid down in
(i) The Native Land Act of 1913
(ii) The Native Service Contract Act of 1932
(iii) The Native Land & Trust Act of 1936.
(iv) The Native Laws Amendment Act of 1937

The principles laid down by the Native Land Act of 1913 are
(i) the division of Union territory into two types of areas
(a) Scheduled Areas i.e. areas in which Natives may acquire land rights - Except with consent of G.G.
(b) Non-scheduled areas " Non-Natives " " "
Extent of scheduled areas being 10½ million morgen out of 143 million morgen
(ii) the provision of additional land for the extension of the scheduled areas, such land to be taken from the non-scheduled areas and to be known as Released Areas
(iii) the restrictions of land rights within the non-scheduled areas. The effect of these restrictions was
(a) to terminate share tenancy of European-owned lands by Natives
(b) to terminate cash tenancy " " "
(c) to regulate labour tenancy " " "
(d) to permit residence of Natives on European owned Lands as Farm Labourers.
(iv) the exclusion of urban areas from the operation of the Native Land Act of 1913.

The bringing into operation of the Act brought to light the ff facts:-
(i) the Act was ultra vires as far as the Cape Province was concerned as it interfered with the franchise rights of the Cape Natives (c. 8)
(ii) the Act did not apply to the urban areas.
(iii) the G.G. could in certain circumstances grant dispensation from the provisions of the Act.

The results of the bringing of the Act into operation were
(i) the eviction of Natives from European farms especially in

the O.F.S. where the E.C. could not grant any dispensations and in the Transvaal

(iv) the increase of the urban native population. Natives evicted from farms adopted the following alternatives

(i) to become farm labourers or labour tenants

(ii) to enter the Reserves which were already overcrowded with people + stock

(iii) to go to the urban areas as wage earners. A considerable proportion chose the last alternative thus creating a new problem in the urban areas.

The Native Service Contract Act of 1932 had as one of its objects the tightening up of the restrictions relating to the occupation of European-owned land by Natives. Many evictions of the Act had taken place since 1913, especially in the Free State and the Crown was faced with the difficulty of proving these evictions as the onus of establishing the guilt of the accused person was upon the Crown. The Act of 1932 placed the onus of proving his innocence upon the accused

The Native Land and Trust Act of 1936 brought in the following features into the Native Land Policy of the Union:—

(1) It extended the provisions of the Native Land Act of 1913 to the Cape. The Appellate Division of the Supreme Court of S.A. had in 1917 in the case of Rama vs Whitwell (A.D. 1917) declared that the Act of 1913 could not be applied to the Cape as it interfered with the franchise rights of Natives in the Cape. This meant that the Act applied to the whole Union except the Cape. This anomaly was removed by the Act of 1936.

(2) It provided for the addition of 7½ million morgen of land to the scheduled areas. This land would come partly from Crown land apart from privately owned land which would be purchased by the Government for the purpose of native settlement.

Of the total ~~area~~ released under the Act of 1936. the extent of Crown land in the different provinces was as follows:—

Transvaal	1401952 morgen
Cape	50747 "
Natal	45949 "
O.F.S	Nil
Total	1497,646.

This land was vested in the Trust in terms of para. 6. of subs(1) of Section Six of the Act. The Government did not have to buy this land.

The extent of land which the Government had to purchase for native occupation in the different provinces was as follows:—

Transvaal	3627 050 morgen
Cape	1565,253 "
Natal	480 051 "
O.F.S.	80 000 "
Total	5752 354.

By 1943-44 the amount of land which had been purchased by the Trust for native occupation in the different provinces (see Summary of Activities of the NAD 1943-44, p. 4.) was as follows:—

Transvaal	1092 078 morgen
Cape	364 013 "
Natal	52 020 "
O.F.S.	42 206 "
Total	1550, 317

NB

It is interesting to note that the natives themselves have purchased 99071 morgen of land in the released areas, while the Trust has purchased 12 001 morgen of land in the scheduled areas.

(iii) It provided for the creation of a body styled the S.A. Native Trust in which vested be vested

(a) all scheduled areas
(b) all crown land in released areas
(c) all land purchased for native occupation in the released areas.

The Trust is empowered not only to act as owner or trustee of land set aside for native occupation but is also charged with the development of that land. It is in connection with the latter part of the provision that the Trust has drawn up a scheme for the development and rehabilitation of the Native Reserves. (For details of that scheme see ("Summary of Activities of the Native Affairs Dept 1944-45") The main points of the scheme are

(1) The reduction of the number of people & stock dependent on the Reserves

(2) the settlement of the surplus population on peri-urban and semi-rural village settlements under conditions similar to those obtaining in urban Native locations

(3) The control of the settlement of the population allowed to remain in the Reserves by (i) regulating overstocking (ii) planning residential areas & (iii) combating soil erosion (iv) improved methods of cultivation

Types of tenure of land in Native Areas.

(1) Freehold – A few natives own land in freehold in the scheduled or released areas.

(2) Quitrent – In a few Reserves in the scheduled areas native hold land under individual tenure under quitrent conditions Some under the Glen Grey System of land & Some under under the Sir George Grey system of land tenure. The quitrent payable is 10/6 per annum

(3) Leasehold – This is the type of individual tenure which obtains on the Trust farms in the Released Areas. The tenant pay a lease rent of £1.10 pa annum

(4) Communal Tenure – In most Reserves land is held under communal tenure under the control of Chiefs or Headmen subject to the supervision of the native commissioner. Holders of land under these conditions pay local tax of 10/- p.a.

(5) Individual Tenure in Mission Reserves in Natal where land holders pay a rental of £ pa annum.

(6) Native Land Tenure in the urban areas is controlled by or laid down

in the native Urban Areas consolidation Act of 1945. Under this Act natives are not allowed to acquire land in freehold except in areas specified by the G.G. Otherwise in locations they may lease land

② Native land Tenure in the European rural areas is controlled by means of the Native Land Act 27 of 1913 as amended by Native Land & Trust Act 18 of 1936. Under these laws a native may not hold land any title of any kind - either freehold, leasehold or servitude, except with the permission of the Governor-General.

Defects of Tenure in native areas.

① Insecurity of Tenure. (a) Freehold only possessed in very areas
Advantages of freehold is (i) security - cannot be removed except by expropriation (ii) can obtain loans i.e. land can be used as security for debt, loans necessary to make improvements.
Disadvantages of Freehold. (i) Difficulty of control - owner is master of land need not accept advice from anybody; may allow any number of people to reside on his land, leading to the development on uncontrolled locations (ii) Freedom of alienation - which may result in loss of land. Under present laws native freehold land in scheduled or released areas can only be acquired by Africans. Hence lower value of such lands has deteriorated.

② As regards the other forms of tenure are concerned -
Quitrent tenure is obviously insecure; holder is only a tenant If he fails to pay his quitrent, he loses his land rights. Other grounds of forfeiture may be imposed such rebellion against the government, absence from land without permission, non-beneficial occupation.
Leasehold tenure on Trust farms is even more insecure because leases are annual leases which may be terminated at the end of any year. This does not encourage the making of permanent improvements on such land.

As far as communal tenure is concerned, security depends upon the goodwill of both the Chief & the Native Commissioner. Again does not encourage permanent improvements.

(2) Uneconomic size of land units. In most surveyed areas amount of land given to landholders varies from four to six morgen. Moreover this is combined with the application of the principle of "one man, one lot," adopted in order to make the land go as far as possible. This makes it impossible for any farmer to gain his livelihood completely by means of farming & discourages the enterprising farmer from doing his best because he is not allowed to invest his profits in acquiring more land. Cf. No of European farms in S.A. is 104544 covering an area of 99,912 000 morgen

(3) The absence of loan facilities. European farmers have the advantage of Land Bank facilities – The Land Bank is a section of the Lands Department which gives loans to farmers for the improvement of their land on liberal terms

The Land & Agricultural Bank was established under Act 26 of 1912
Between 1910 & 1936 Loans to European farmers over £71,000000 } during same period
" other forms of assistance " " " 41,000000 } £750,000 spent on Native agriculture.

(4) Lack of Marketing facilities. (a) Part of produce consumed (b) Surplus to be disposed of. Unless adequate facilities for disposing of surplus, waste results & there is no incentive for production. Marketing requires (i) proper storage facilities (ii) transport facilities (iii) price control.

(5) Lack of stabilised labour on Farms. Because of uneconomic size of plots farmer must supplement his earnings with wage-earning. Hence migratory labour