

Black church buildings that are still on white churches' land: a land restitution perspective¹

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Abstract

This article consists of five parts. Firstly, what restitution means in the South African context is traced briefly. Secondly, the historical background on land possession by whites and dispossession of blacks in South Africa is highlighted. Thirdly, the legal aspect of land occupation by blacks in South Africa is discussed, with special reference to black church buildings that are on white church land. Finally, there is discussion on how land restitution can apply to black churches that are on white land.

A case is made for land restitution within the context of the Uniting Reformed Church in Southern Africa (URCSA's) struggle to have the property registered in the names of the congregations, and the dispossession of church buildings owned by the Dutch Reformed Church (DRC) in Africa, based on title deeds in the name of the DRC. This article is based on qualitative research conducted by the author from URCSA on land issues. The author uses observations, interviews and document analysis. This article argues from the land restitution perspective.

Introduction

The background

The racialisation of land ownership in South Africa began with the first wars of conquest and continued with appropriation through treaties and direct occupation. The dispossessed African population tried to retrieve their land by purchase, but as natives they were forbidden by law to do this. They then sought to retain access to the land as lease-holders; again they were prevented by law, because they were black. They entered into agreements as share-croppers; the law invalidated these agreements on the grounds of race. Blacks worked the land as labour tenants; this was made illegal in terms of so-called native policy. Those who had managed to cling to legal title were forced to vacate their land because they were said to be occupying black spots in white land (Sachs 1990:106-107).

Many black South Africans could not own land and were forced to secure employment in towns and cities. Many lived in poverty-stricken informal settlements and could only dream of possessing a piece of land on which to build a home. But over the past 16 years the South African government has put a great deal of effort into empowering people and realising some of their dreams of having a piece of land and owning a home.

There is an enormous amount of unfinished business in South Africa relating to the country's past, one issue being the high percentage of black South Africans who do not own land. One consequence is the fact that black church buildings are still on land owned by white churches. Failure to deal with the problem will leave the country crippled and hostile. Sachs (1990:108-109) argues:

One can say that there is massive affirmative action in favour of whites. The first thing to do will be to end the vast privileges attached to race as such, and to ensure that what the state supports is farming and not whiteness. The question of subsequent affirmative action to support the racially under-privileged rather than the racially over-privileged will then be one that can be considered.

This article tackles the historical and legal background to why black churches were built on white church's land, defines "restitution" and examines how the government can make restitution.

Aims of this study

¹ This article was presented at a seminar on land restitution at the University of South Africa, 20. April. 2010.

The aims of this article, then, are five-fold. The first is to briefly trace the history of land ownership by citizens of South Africa throughout the ages. The second is to describe and give the results of empirical research done by the Uniting Reformed Church in Southern Africa (URCSA) synods on land issues and property registration. The sample used in the study was randomly selected, based on the occupation of church buildings. The author uses observations, interviews and document analysis in this study.

The third aim is to define “restitution” in the South African context in order to identify possible ways to claim back church buildings that are on white church land. The fourth is to trace the legal aspects of land occupation by blacks in South Africa, with special reference to former black church buildings on land belonging to white churches. The final aim is to see how land restitution can redress the problem of black churches that are still on white church land or state-owned.

Historical background to land occupation

Throughout South African history the church has played a role in advancing or retarding human development, for example establishing schools and hospitals, only for the people to be dispossessed of the land and forcibly removed from it. Mission stations provided the prescriptive and exemplary groundwork for apartheid as a division of land between white owners and black labourers. Missionary practice provided the foundation for indirect rule and supported influx control. Maylam (1986:85) posits that, in time, African enthusiasm for missionaries in South Africa, particularly in the former Natal, began to wane, and the missionaries’ survival increasingly came to depend on their ability to offer secular benefits. Missionaries were seen as potential intermediaries in dealing with the colonial authorities, and as providers of welfare services. Some chiefs looked to missionaries for assistance in buying land.

There were, however, some opportunities for Africans to buy land. A Cape proclamation of 1858 permitted Africans to purchase crown land, and by 1864 over 500 Africans had between them bought 16 200 acres. Moreover crown land, as well as land at some mission stations, could be rented on the basis of individual tenure. Access to land and labour provided some of necessary means for peasant farming. But there were also other incentives and stimuli that came into play, one being the missionary influence (Maylam 1986:105).

In the meantime other developments and trends dampened the hopes of those who had believed that a British regime would accord greater rights and opportunities to blacks. In 1903 Lord Milner, the High Commissioner, appointed the South African Native Affairs Commission to devise a common policy for blacks in the whole region. When the commission reported in 1905 it came out firmly in support of the principle of racial segregation: it recommended the territorial separation of blacks and whites, urban segregation and a political system based on racial segregation. In the former Transvaal, the Milner regime had already begun putting segregation into practice. Here the formal segregation of blacks in locations was authorised by municipalities, and the Municipalities Ordinance of 1903 denied blacks the municipal franchise (Maylam 1986:105).

The South African War (Anglo-Boer War) had made land more accessible to Africans in some regions. But in the following years this accessibility rapidly diminished as the state intervened to assist the commercialisation of white farming. In that period even the land owned by Africans was taken from them. White landowners often found that the best return could be obtained by renting land to African tenants.

The 1913 Land Act was of greater significance in the long term than in the short term. Its immediate impact was limited and varied from region to region. The Act could not be applied to the Cape because its provisions interfered with that province’s nonracial franchise, which was entrenched in its constitution. Nor did the measure bring about a sudden transformation of productive relations. Neither African rent tenancy nor sharecropping was completely eliminated; however, if the African peasantry was not killed off, it was certainly stifled by the Act. Land would now be much more inaccessible and opportunities for purchasing it were severely curtailed. In addition, a large number of African tenants were evicted from white-owned land (Maylam 1986:143). The problem of black churches still being in the hands of the white churches is the result of this Act.

History of land acquisition by the church

The history of land acquisition by the church unfortunately begins and coincides with the advent of colonial domination in South Africa. This is a period that was largely characterised by violently dispossessing the indigenous people of this country of their land and making it much more inaccessible. Furthermore, Sachs (1990:107) argues that black land, was state-owned and controlled. Access to such land was governed by systems of grants, rigid laws of succession and supervision by

government-appointed or recognised chiefs. Occupiers could grow food on this land, erect houses and churches and (subject to controls) keep livestock on it. Based on Sachs' (1990) argument, churches had no option but to acquire land through a number of mechanisms, including permission from the chief/king and a grant from the colonial administration; purchase of land by the church; and land held in trust on behalf of communities.

- Permission of the chief/king and grant from the colonial administration

The church approached the chief to obtain land for their activities. Chiefs gave this land in appreciation of the importance of the tenets of religion as articulated by the church. Most of these allocations occurred during the 19th century. In some instances, they involved vast tracts of land on which the church subsequently set up different projects and institutions (for example hospitals, clinics, training colleges and schools). In most cases these were of benefit to the local communities. The colonial administrations of the past also granted land to the church for personal use by the missionaries and some acres for the use of the congregation. Tsele (1997:3) argues:

According to the British High Commissioner in the Cape, Lord Grey, every missionary who settled in a location was to be given a piece of land for his own use and 6 000 to 7 000 acres for his congregation.

These grants had different conditions attached. Some conditions could be interpreted to mean that the grants were given specifically for the purpose of fulfilling certain objectives. In other cases, the grant document was silent on the conditions: for instance, the land given to the DRC Free State at Maboela village in Qwa-Qwa under the control of the late chief H Mopedi for the former DRC in Africa Witshoek congregation and the Stofberg theological school (Lefika) in terms of permission to use and occupy was controlled by the White Dutch Reformed Church in Bloemfontein. A similar case is the Stofberg theological school at Mankweng in Limpopo; and black churches in villages fall into this category of land acquisition.

In the Ottosdal presbytery, where the Tswana Mission Commission of the Western Transvaal synod operates, there are black church buildings that are directly under the control and ownership of the DRC. In one meeting between the secretary of the Tswana Mission Commission of DRC and URCSA Khunwana church council, the secretary of Tswana Mission commission stated that the White church had acquired land from Chief Moshwete of the Barolong tribe at Ga-Khunwana to build the church buildings in Ga-Khunwana, Mofufutso, Sione, Shale and Middleton B. From the discussions and letters the secretary of Tswana Mission Commission wrote to the council of the URCSA at Khunwana, it was clear that the church building was in the hands of the Tswana Mission Commission of the Western Transvaal synod. In any dispute regarding the building, the Tswana Mission Commission should be the key roleplayer because it held the title deed to those buildings. In this sense one could say that the Land Act of 1913 played a major role, so that even today in democratic South Africa most black church buildings are still in the hands of the white churches.

With regard to land granted to the church by the colonial administration, there are three questions that need to be answered: Should the grants be upgraded to ownership? What weight should be attached to the conditions? and Where the grant document is silent on conditions, what should be done?

- Purchase of land by the church

According to Maylam (1986:86), in 1874 it was estimated that in practice about five million acres of land owned by colonists and companies were occupied by Africans, most of whom paid some form of rent, whether in cash or in kind, to their landlords. Land was accessible to Africans in other ways. Mission stations were allocated areas of land, often amounting to between 6 000 to 8 000 acres for each station, for African occupation. The practice of African land purchase originated in the mission reserves. Some mission stations encouraged Africans to acquire individual freehold title, and this practice soon spread beyond the mission reserves. In 1880 new regulations on the sale of rural lands were introduced, and from that time land purchased by Africans became more widely reported. Some African buyers operated as individuals; others formed themselves into syndicates.

In this situation the church bought land mostly from white farmers and had proof of purchase. For years the church allowed people to live on or occupy certain portions of this land. With the passage of time these people may have acquired the rights to this land, but the church has disregarded these rights throughout history. Everingham (2006:549) indicates:

The Governor-General of the Union of South African approved the deletion of a clause in the Deed of Grant that stated Elandskloof must be used for 'missionary purposes' only. The Governor-General deliberately refused to acknowledge the traditional occupation and ownership of coloured people that prevented Elandskloofers from registering their rights with the local magistrate. The community was further shaken in 1958 when the Dutch Reformed Church (DRC) considered the sale of the land to commercial farmers in Citrusdal. They argued that Elandskloof was not being cultivated efficiently and that the residents lacked entrepreneurial skills. The DRC sold the mission station and the adjacent farm to the Smit brothers for R34 000 on 24 July 1961.

- Land held in trust on behalf of communities

In some areas, particularly the former Transvaal, the churches were asked by communities to buy land on their behalf. This was the result of apartheid laws that precluded African people from owning or buying land. This land now appears in the deeds registry as being registered in the name of the church (the white church).

The legacy of land acquisition by the church has a great impact on the URCSA and the DRC in Africa in the present situation, based on the properties that are in the hands of the DRC. The land reform commission needs to take into consideration the impact of this acquired land when claims are made.

Certain church authorities were not above expelling blacks from their homes with police assistance. The Hermannsburg Mission of the Evangelical Lutheran Church of South Africa actively prevented black land ownership. At its Perseverance station in KwaZulu-Natal, the mission displaced blacks under the Land Act without state prodding. Similarly, the Berlin Missionary Society sold its mission land to white farmers, who often evicted black mission tenants. The Evangelical Lutheran Church in South Africa whitewashed their apartheid practices by transferring ownership to holding companies designed to administer church investments. Other missions referred to include the American Board Mission and Lovedale Mission. The DRC worked together with the state to replace the community on the Ebenhaeser mission land (Western Cape) with a white community between 1909 and 1926 (Everingham, 2006).

As knowledge production centres, missions imposed a sense of the superiority of "European civilisation" on black converts. Their historical support for dispossessing black people of land obliges the churches to be particularly responsible for land reform in post-apartheid South Africa, instead of defaulting to a misplaced sense of neutrality. Large sections of "the church" participated and profited from the dispossession of the black majority. Approximately 475 mission stations were established across South Africa between 1737 and 1904. Mission stations often received up to 8 000 acres for tenants, with missions controlling 175 000 acres in Natal, for instance (Maylam 1986:86).

There is a serious concern about the slowness of implementation, the implicit rural-urban divide, the promotion of small African commercial farmer elites, and the exclusion of the majority of urban landless people from any benefits. These reflect the intense scrutiny of denominational land, which began in the 1990s, by ecclesial, academic, state and nongovernment agencies.

Various denominations also embarked on land reform projects, often in conjunction with nongovernmental organisations. The Church of the Province of Southern Africa (CPSA) convened a land summit in 2002 that was facilitated by the Church Land Programme. Another followed for non-South African dioceses in 2004. The CPSA investigated the extent of its own land ownership, and designated Bishop Rubin Phillip of the Diocese of Natal as "Liaison Bishop for Land in the CPSA". The Methodist Church of Southern Africa in 2004 commissioned the Community Organisation Resource Centre to audit their land in KwaZulu-Natal and in the Eastern Cape with an eye to redress. The Catholic Church was to follow suit in 2005.

Denominations with the largest percentage of church land also initiated audits and designed related programmes, including the Moravian Church, which held property in the Deeds Office under 11 names. The Moravians signed the Genadendal Accord with the Minister of Land Affairs to improve tenure rights of people on its land. The Evangelical Lutheran Church intended to redistribute farmland on "most" of their 17 mission farms, including a "large portion" of the original Hermannsburg Mission, founded in 1854 at Kranskop in KwaZulu-Natal (Everingham, 2006).

The (mostly white) DRC's 2002 synod claimed that "the church does not have enough ground available" to significantly contribute "to land reform". The synod did ask DRC bodies to record their land ownership and to consider making land available for redistribution. On the other hand, the same churches possess land registered in their name with the Deeds Office and used by the DRC in Africa as well as the URCSA as long as they behaved according to the norms and standards of the DRC. Even

during this period of land restitution and redistribution, the DRC and her daughter church, the DRC in Africa, continued to forcibly remove the majority of URCSA members from church buildings because they did not have the title deeds of the land the church was built on.

The churches contributed to the process of dispossessing indigenous people of their land; churches need to redress this by participating in the process of land restitution and distribution. The government, together with the ecumenical movement representing churches, should consider how to proceed with the repeal and application of the Land Act that will assist black churches that are still in the white churches' land in terms of the previous land act of 1913, in order that black churches can upgrade the permission to occupy to title deed in their names without any legal cost and court cases.

Research on the land issue in the Uniting Reformed Church in Southern Africa

During 2010 a research project was conducted to determine the need for land restitution, in order to assist formerly black churches – with special reference to URCSA – to access land previously owned by white churches. Semi-structured interviews were conducted with four chairpersons of the presbyteries in the North West, namely Lichtenburg, Wolmaransstad, Ottosdal and Potchefstroom. Furthermore, members of church councils, presbyteries and regional synods of the URCSA where there are land or church building problems were also interviewed. In this study observation was used to collect data on land possession by URCSA congregations. The distinctive feature of observation is that it offers a researcher the opportunity to gather “live” data from naturally occurring situations. Minutes and letters from individual DRC ministers were studied and analysed by the author, as stated in the aims of this study. Questions were asked on title deed holders, ownership of land, difficulties people face when trying to register land in their names, and what are they doing to find the title deeds if they are in the hands of the DRC.

The results of this research study are presented briefly. In response to the question on title deeds, 30 congregations out of 35 in the said presbyteries did not have the title deeds to the land, and during the interviews most respondents indicated that they did not have the title deeds. One of the ministers in North West said: “I was surprised to find that the church council does not have the title deed of the land used by the congregation. The worst thing is that there are renovations of the church buildings. Trying to find that title deed was so difficult and costly.”

During this research I found that the Christiana congregation had lost a case against some people in the congregation who claimed to be members of the DRC in Africa. In this case, the minister said: “The lack of the title deed has made us to lose the building we maintained for years, due lack knowledge and ignorance of the Land Act in South Africa.” He said further: “I wonder why the Dutch Reformed Church did not hand over the title deed, when the law of the country has changed.”

During the interview it was very interesting to find that issues of land possession and title deeds only come to the surface when there is a dispute between the URCSA and the DRC in Africa. There are similar cases in the Far East Rand where most respondents said: “We called ourselves URCSA and have buildings maintained and renovated but we do not have the title deed for that land, it is also difficult, time consuming and costly.” This shows that there is a tendency for churches not to have title deeds for the buildings they use and that they find it difficult to access the title deed in their names.

When reading and analysing the minutes of the September 2009 Southern Synodical Commission meeting, I observed that the church office in Kagiso was still under the DRC within the jurisdiction of the Mogale municipality. When I asked the administrator why the office was not registered under the URCSA as per resolution 65 of the Achterberch 2003 synod, he responded: “It is difficult to register this office since we still owe the municipality services and the legal cost is high (Resolution register of URCSA Southern Synod 2003).”

During the process of document analysis letters, minutes and grants of deeds were analysed. In the Ottosdal presbytery the crucial area was the Khunwana congregation, where there is a dispute between the DRCA and the URCSA regarding the use of the building. This dispute has revealed that neither former black church owns the land, and that it belongs to the white church administrated by the Tswana Sendingkommissie.² The letters of the secretary of the Tswana Sendingkommissie verify the possession of the title deed or grant of deed. He wrote to the church council of the URCSA Khunwana that the buildings that are in the jurisdiction of Khunwana congregation are categorised into two, some are URCSA buildings and others are DRCA buildings. What surprised me was the tone of the letter that indicated authority over and ownership of those buildings. It was clear from the analysis and further investigation that the buildings might be used by the two churches but that the land belonged to

² Tswana Sendingkommissie means the Tswana Mission Commission. It is the commission of the Western Transvaal synod in the DRC that was established to assist the Batswana DRC in Africa congregations with the jurisdiction of the former Bophuthatswana homeland.

the Tswana Sendingkommissie, according to documents, letters of instruction and the eviction of the Evangelist at Khunwana by the secretary of the Tswana Sendingkommissie.

In the Phororo synod³ of the URCSA, for example in Taung, congregational land is registered under the DRC in Hartswater under the old Bantu Commission for Home Affairs. The registration is based on letters by the missionary requesting permission to occupy the land. Regarding the church in Mankweng village where the Stofberg Theological Seminary was built, it did not have title to the land but did have permission to occupy it for the purpose of theological training. The municipality was not prepared to assist the church in finding the title deed for that land. The matter eventually went to court and the court ruled in favour of the URCSA regarding registration of that land in the name of the church.

The white church, in particular the DRC, claims that it is prepared to transfer all properties used by other members of the DRC family into their names according to DRC's church polity. Furthermore they are also aware of problems that will be faced, based on the former legal position in South Africa. Some buildings are traditional areas on communal property; some are on property belonging to the municipality or local government; and some are on state property in the vicinity of the old mission hospitals and schools. Much has been done to secure the right of use, but the necessary action should be taken to subdivide these portions of land and secure property rights for the various churches and congregations (Ernst 2010:5).

The results of this study indicate that even though the government is prepared to assist the previously disadvantaged to access land, there are some difficulties in registering black churches' land that was previously on the white churches' land. These results give a clear indication that there are still black churches on white church land. The ecumenical movements also need to appeal for the repeal of the Land Act, so that the process of land restitution can help former black churches to access the land with ease and to assist the white churches – in particular the DRC – to transfer properties that belong to former black churches to the relevant owners.

What restitution means in the South African context

Restitution is the process by which land and other property that was forcibly removed from its owners is restored or compensation of equivalent value provided. Land may be forcibly removed from its owners in a variety of circumstances. Collectivist governments expropriate land so that individual ownership is replaced by ownership by the state. Colonisation can result in land possessed or controlled by native peoples being granted to colonists, for example as farms. Wars and internal conflicts can result in people being driven off their land, for example through ethnic cleansing, or the ownership of land formerly possessed by the vanquished being granted to the victors. These processes have been going on throughout human history. What is relatively new is that during the past two decades some governments have adopted restitution policies to reverse past expropriations. This study is concerned with the means by which restitution is achieved, its consequences, and the circumstances in which restitution has not been successful. In particular, it seeks answers to the question of whether restitution has achieved the objectives set for it.

Restitution as a phenomenon is important for two main reasons. Firstly, from an economic point of view, it has significant implications for the functioning of the property markets in the countries where it occurs, including an impact on foreign investors in real estate. It means that owners who previously thought they had good title to a property no longer enjoy this. The wealth of the previous owner is destroyed, or at least reduced. Restitution is therefore associated with the redistribution of wealth. Often the owner who had previously enjoyed good title is the state, and the new owner is a private individual. Restitution is therefore one of the means by which private property markets and individual decisionmaking over real estate have been created in transitional economies.

Secondly, restitution can have important sociopolitical consequences. Expropriation involves the denial of human rights and is often associated with other violations of these. Restitution can be used as a means of achieving closure in conflicts, the settlement of which can involve the restoration of property to those who have been dispossessed. Restitution can enable refugees and internally displaced persons to return home. Without restitution, they may have no home to return to. Restitution is one means by which the perpetrators of human rights abuses can make reparation and undo some of the harm that has been done. The key issue in such circumstances is how to achieve a sufficient measure of support from all those involved so that the conflict can be resolved (Grover & Flores-Borquez 2004). What is the role of the church within the process of land restitution? How can the church restore justice to the victims of unjust actions in the past?

³ Phororo Synod is the synod of the URCSA within regional Northern Cape and some parts of North West.

In a previous article (2009), I argued that “the church as God’s chosen community”. The church as a community is a structure which consists of a system of working together. Here we will refer to community as the structure of social systems, which is preferable to the territorial location of persons and their activities. In this regard, structure is the church which consists of the system of rich and poor; useful and useless; men and women; youth and old believers. All need to coordinate in a way that will give life to this structure through their activities. These activities centre around service to God, oneself, other human beings and the physical organic environment within the grand acts of the God of creation (land); reconciliation (paying back); renewal and future fulfilment. The church, as a living organism and not a static organisation, needs to develop by transformation or reformation from within. It is very unfortunate that when the church grows as a living organism it does not have enough space to develop and expand.

The land policies we have had so far favour the minority at the expense of the majority. Whites have been helped while blacks have been hurt by the said policies. In democratic South Africa, these injustices have to be overcome through restorative justice. The church, in particular, claiming to be a custodian of truth and steward of justice, has a moral and pastoral responsibility to deal with the issue of land injustices since a human being is made of God and land (Makula 2005:1).

The past is not considered in order to return to it, but to give us better understanding of how best to prepare for the future. The story of how the problem of land injustices or imbalances started has been well documented in historical records.

Legal aspects that led to black church buildings being on white churches’ land

The principles of Roman-Dutch law in relation to ownership have been regarded as immutable when applied against blacks, and as capable of infinite flexibility in response to the interests of whites. Thus, the courts have had no difficulty in upholding the right of a white farmer to expel black occupants from his or her land, no matter that they and their families have farmed that land for generations; no matter that all kinds of arrangements intended to be binding were entered into between their grandparents and those of the present owner; no matter that they have nowhere else to go and no right or means to acquire land or shelter elsewhere; no matter that no public authority is under any duty to assist them. At most, the more sensitive judges have insisted on a reasonable notice period ranging from some months to a year. If one day the law were turned around and the ancient claims of whites were wiped out by statute and the present owners were referred to as squatters or unlawful occupiers, what indignation there would be at the violation of elementary property rights. Far from Parliament attempting over the years to adapt the principles of land ownership to reality, it has striven to compel reality to conform to the rigid principles of ownership. Thus the aim of statutes preventing blacks from owning or leasing land, or from entering into share-cropping or labour-tenant relationships, was precisely to combat the tenacious struggle of black people to retain guaranteed property rights, and to prevent any kind of sharing of interests in the land. Ownership, whiteness and absolute control became synonymous, as did absence of rights, blackness and subordination.

Sachs (1990:114) wrote that, in South Africa the freedom to contract in relation to the use of property has been systematically denied. The principal objective of the Land Act was to prevent blacks from entering into contracts of sale or lease. Blacks did make solemn contracts with white landowners, such as share-cropping arrangements or agreements for labour tenancy; but their tenacious attempts under conditions of unequal bargaining power to establish a continuing legal connection with land were later deliberately and directly undermined by successive apartheid statutes. Furthermore, Sachs (1990:106) posits that, South Africa has been appropriated by a minority. At the political level this appropriation has been maintained by monopolising the franchise, at the level of daily life by control of the land. The fact is that whites by law own 87% of South African land. They can expel blacks from the land, demolish their homes and prevent them from crossing or remaining on the land. Control over land is not only control over a productive resources, it is control over the lives of people. Based on Sachs’s (1990) argument, the majority of black South Africans were prevented from owning land in their ancestral motherland by the apartheid regime using the Dutch Ordinance of 1893, which prevents natives from either owning or leasing land. This ordinance gave the white church permission to buy or lease land for black churches in black people’s areas. As a result of this, black churches are still on land belonging to white churches.

The Land Acts of 1913 and 1936 sealed the unequal distribution of land between African and white. Section 2 of the 1936 Native Land Act deals with squatters. Natives were prohibited from using or occupying white land (Claasen 1991:43). In terms of the 1936 Act, 82 million morgen became scheduled reserve land. This created the disproportionate distribution of 13% of the total land surface in South Africa being reserved for Africans and the rest for whites.

When the National Party came to power in 1948, measures for segregating the nation according to race were already in place based on land distribution between blacks and whites in South Africa (Letswalo 1987:43). The first thing to note is the fact that the South African Native Trust of 1936 was replaced by the South African Development Trust, which became the owner of all land belonging to Africans (Claasen 1990:55).

Claasen (1990:55-56) wrote that “land ownership is not appropriate for the native – it is more beneficial that white governments administer blacks’ land for them”. The government’s view was that it was for the good of the Africans. After the 1948 election, the National Party imposed the Group Areas Act of 1950. Over the next decade, the apartheid state and white farmers colluded to gain access to fertile agricultural areas held in the form of mission land by the Dutch Reformed, Moravian and Anglican Churches. The Governor-General of the Union of South Africa approved the deletion of a clause in the deed of grant that stated that Elandskloof must be used for “missionary purposes” only. The Governor-General deliberately refused to acknowledge the traditional occupation and ownership of coloured people that prevented Elandskloofers from registering their rights with the local magistrate. The community was further shaken in 1958 when the DRC considered the sale of the land to commercial farmers in Citrusdal. They argued that Elandskloof was not being cultivated efficiently and that the residents lacked entrepreneurial skills. The DRC sold the mission station and the adjacent farm to the Smit brothers for R34 000 on 24 July 1961. This is an illustration of how black churches were legally on white church lands.

Since 1991 a number of policies, structures and legislation have evolved. Section 25 of the Bill of Rights in the Constitution (1996) mandates land reform while protecting private property. The 1997 White Paper on South African Land Policy outlines the three legs of the current land reform programme: restitution in terms of the Restitution of Land Rights Act (1994); redistribution; and labour tenant security in line with the Land Reform Act (1996) and the Extension of Security of Tenure Act (1997). The direction of land reform was strongly influenced by the National Land Committee (a land rights network) and the World Bank prior to 1993. Restitution of land lost through expropriation after 1913 has been most successful.

Church land ownership has received far more attention since 1991 than one could have anticipated. By 1999 the Department of Land Affairs considered proposals “for dealing with the church as a substantial landowner”, and identified 7 500 names under which church land was registered. The shortcoming of this policy on church land ownership is that the department is looking into ways in which the church can contribute to redressing land inequality, not on how the previously disadvantaged churches that were racially divided (like the DRC in Africa (black), the Dutch Reformed Mission Church (coloured) and the Reformed Church in Africa (Indian)) could upgrade the deed of grant in order to have ownership of the land they occupied in the past and still occupy today.

Restitution of land within the context of the Uniting Reformed Church in Southern Africa

It is very surprising to find that there are still churches within democratic South Africa that are struggling to register their property with the Deeds Office because the other churches own the title deed of a piece of land that they occupy under the previous legislation. The DRC in Africa acknowledges that black churches do not have land for the buildings they claimed to possess, stating in their memorandum to the URCSA:

Also not by trying a clever move as if it is only now you (URCSA) discover what everybody knew all the years – the title deeds of many buildings were taken out in the name of the NG Kerk. This changes nothing before law since, in a time when we could not own properties, NG. Kerk held it in trust for the NGKA or URCSA.⁴

In the case of the URCSA, one can cite cases in the North West (Phororo synod) where URCSA church buildings in the Taung District are still under trust of the DRC congregation of Hartswater (Mocweding, Buxton and Taung congregations) and it is difficult to transfer the right of occupation to the URCSA.

The URCSA has lost a number of court cases against the DRC in Africa because the URCSA is not in possession of the title deed. The URCSA Christiana court case is an example, where fewer than ten people who declared themselves members of the DRC in Africa were given the right to occupy the building. The reason for granting the right to occupy was that the URCSA did not have title to the land. Another example one might cite is that of the Turfloop seminar land and buildings at Mankweng,

⁴ DRCA memorandum to URCSA, 15. April. 2010.

where people invaded the church land and occupied the buildings. The argument in favour of the people as opposed to the church is that the church does not use the land for the purpose intended (meaning “mission”), which does not appreciate that indirectly the church uses the land for the same purpose. The URCSA rents buildings and land in Turfloop to support the theological students in the Northern Seminary who are studying at Unisa and the University of Pretoria. For this reason the church needs this land to generate income in order to advance gospel and theological training. Recently the matter was dealt with in court; the ruling went in favour of the church, which now has the right to register this land in its name. The last unresolved issue is the rights of the people who have unlawfully occupied this land; must they rent the land from the church or be evicted? The church is prepared to contribute to land restitution by giving a certain portion of the land to these people.

Conclusion

In conclusion, it is necessary to abolish racist statutes, equalise state support, introduce principles of constitutional rights and apply the rule of law. These are concrete ways of deracialising the land law that has created the situation that black churches are still on white church land, and will open the way to a fair and widely accepted method of tackling the difficult problem of competing claims to land. In order to address this problem, the land law as such, that is the law governing the control, occupation, and use of actual pieces of land by all the people within South African society, must be deracialised.

This is what the Freedom Charter demanded when it said that South Africa belongs to all who live in it, and that the land should be shared amongst those who work it. Once the principle of common belonging is established, the basis of equitable sharing exists. Until the foundation of common belonging is laid, however, defence of private property means defence of white property, which means defence of white domination. In this regard the new land law in South Africa should address the problem of land that formally belonged to the white churches but was used by black churches due to the racist land laws.

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