

# Reflecting on Land ownership and opportunities for affordable housing development in South Africa

## Blog

Land acquisition and assembly is the primary step of, and core input into, the housing delivery value chain. However, there are a number of factors that can impact on the access to adequate and suitably located land for housing development and it is important to understand the dynamics of land markets in South Africa that impact on housing delivery. This particular blog reflects on the history of land in South Africa, tenure and property rights and the legislation that governs land, land development and ownership which includes the opportunities that lay ahead as we observe South Africa's land expropriation bill being amended.

### 1. Reflecting on Land Matters in SA

To understand South Africa's present-day land issues and its complexities, it is useful to reflect on the history of land and property laws focusing on three historical periods: colonialism (beginning in the 17th century), the apartheid era (1948 to 1994), and democratic governance (1994 and beyond). The year 1652 saw the first arrival of colonialists with their own administrations and legislative frameworks. The initial Dutch settlers establishing a permanent

settlement at Cape Town and in 1672 laid claim and ownership of the Cape territory. Roman-Dutch law formed the common law of the land and to a lesser extent, English property law. The dispossession of land from indigenous South Africans began as early as then, with proceeding years enactment of laws and legislative frameworks that spatially segregated people based on their race, with majority of land ownership tipping in the favour of the minority. The Natives Land Act No 27 of 1913 established land reserves with only 7.3% of South Africa's total land area (and later expanded to 13% through the 1936 Native Trust and Land Act of South Africa) to the black population. The Act

prohibited Black South Africans from buying or occupying land beyond the reserves as this was deemed illegal.

During the Apartheid regime, racial segregation was further entrenched and deepened. A series of land Acts set aside more than 80% of the country's land for the white minority, and a pass law system which required non-whites to carry documents authorizing their presence in restricted areas e.g. If they had employment in a restricted area. The Group Areas Act further demarcated South Africa into areas for specific race groups to live or to operate businesses, resulting in further dispossession of land, displacement and forced mass removals of people from their homes into these designated areas. Productive land was taken away from black families and indigenous South

Africans were largely denied tenure rights and by 1994, 40% of the country's population were living in extreme poverty.

South Africa became a constitutional democracy since 1994, however the spatial segregation, economic and social impacts of colonialism and, more so, the Apartheid regime are still very much present in South African society and have contributed to the gaps between land accessibility and property ownership. As a result of this history, land issues remain highly contested in South Africa as current governing structures are driven to address spatial injustices and the resulting complexities of land access, land tenure and land use management through intensive reforms since 1994. South Africa is still challenged to dismantle a fragmented spatial and tenure system.



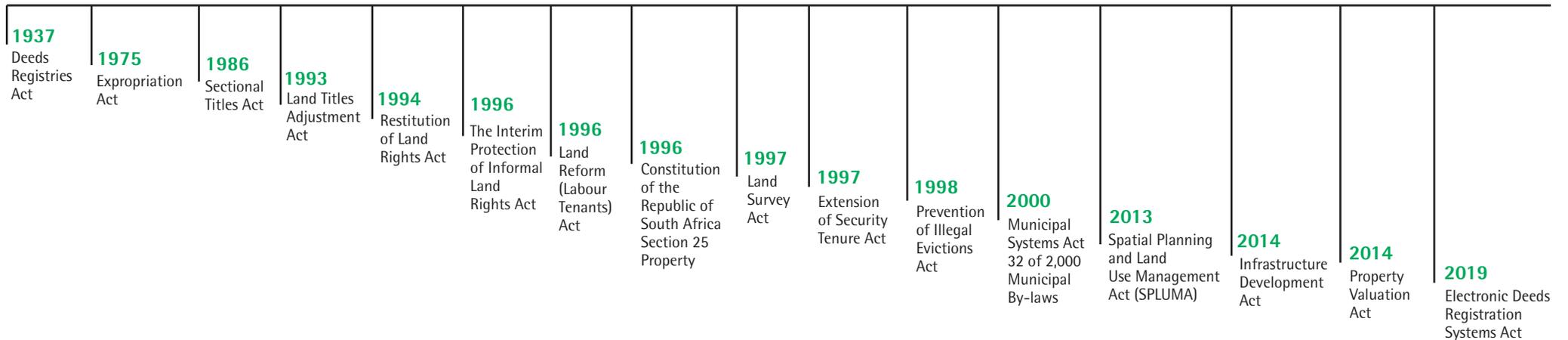
# 2.

## Legislative aspects

Since the election of a democratic government in 1994, South Africa has implemented extensive reform to address inequalities in access to land. There are various pieces of acts and policies that provide directives or guidelines for land identification, addressing land and land use development, land and property ownership as well spatial transformation, some of which are listed below:

- The Constitution of the Republic of South Africa
  - Section 25. Property
- Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)
- Expropriation Act 63 of 1975
- Sectional Titles Act 95 of 1986
- Prevention of Illegal Evictions Act 19 of 1998
- Extension of Security Tenure Act 62 of 1997
- Land Reform (Labour Tenants) Act 3 of 1996
- The Interim Protection of Informal Land Rights Act 31 of 1996
- Restitution of Land Rights Act 22 of 1994
- Land Titles Adjustment Act 111 of 1993
- Infrastructure Development Act 23 of 2014
- Deeds Registries Act 47 of 1937
- Land Survey Act 8 of 1997
- Property Valuation Act 17 of 2014
- Electronic Deeds Registration Systems Act 19 of 2019
- Municipal Systems Act 32 of 2000
  - Municipal By-laws

Figure 1: Timeline showing some of the key land related laws



# 3.

## Government updates South Africa's land expropriation bill

The bill is part of the work of government in ensuring redress and fulfilling the aspirations of the people to have an equitable society. The bill comprehensively covers the various areas and instances where land can be expropriated with the conscious view on the various uses of the land opportunities, these including - agriculture, human settlements and industrial development.

The bill is set to replace the current Expropriation Act of 1975, and clearly how and when expropriation can take place in South Africa.

### **Key focuses of the bill of the instances when land may be expropriated without compensation includes:**

- Where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from an appreciation of its market value;
- Where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;
- Where an owner has abandoned the land by failing to exercise control over it – notwithstanding registration of ownership in terms of the Deeds Registries Act;
- Where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land;
- When the nature or condition of the property poses a health, safety or physical risk to persons or other property.

South African land matter, from policy to its tenures – may continue to remain a work in progress for reforms as views for how redress should occur specifically as spatial reform and prime land occupation remain visibly unaddressed in their form.

One of the laws that will have greater impact on land and land development this year is the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA). SPLUMA, which came into effect in 2015, was established to provide a uniform system of spatial planning and land use management throughout South Africa in order for municipalities to apply land use control. SPLUMA focuses on four principals of spatial justice, spatial sustainability, spatial resilience, and efficient and good administration to guide land use governance. According to new legislation all municipalities will have to be compliant with the SPLUMA by October 2020, and will have to adopt and approve a single land use scheme over their area of jurisdiction accompanied by municipal spatial planning and land use management by-laws. This will have an impact on land and its development and affects all properties which may include residential, industrial, commercial, tribal and farm land. State land is also subject to the SPLUMA legislation. It affects those applying for land developments or new sectional title schemes. By-laws differ from municipality to municipality, with some municipalities requiring a SPLUMA certificate to be completed before any property can be registered with the National Deeds office, be it new erf in an approved new township establishment, subdivision of erf in an approved township, consolidation of erven or sectional title scheme registration.

## 4. Tenure and ownership

Housing investments depend on land having a legal title and security through tenure and property rights. Land tenure refers to the mode by which land is held or owned, or the set of relationships between people concerning land or the product on it determines who can use land, for how long, and under what conditions<sup>1</sup>. They cover a wide range of activities or issues such as access, use, transfer, development, inheritance and access to credit and services. In South Africa, tenure arrangements may be based both on official laws and policies and on informal customs. Tenure is categorised as:

- **Private land:** Ownership and rights are in the names of private people or entities e.g. an individual, couple, company or organization.
- **Communal land:** Ownership and rights belong to a communal entity e.g. Tribal land, Ingonyama Trust Board (applicable in Kwa-Zulu Natal).

- **State land:** Ownership and rights belong to an authority in the public sector e.g. Municipal, Provincial or National government.

Formal tenure is established, registered and secure whereas informal tenure is unregistered and insecure. Dwelling units that lack security of tenure, have limited access to urban services and are not compliant with city planning and regulations are referred to as informal.

The Deeds Office in South Africa is responsible for the registration, management, and maintenance of the property registry of South Africa. In 2017, the Department of Rural Development and Land reform undertook a land audit which showed that of the 121 924 881 hectares of land, 114 223 276 hectares (94%) in the country was registered in the Deeds Office with 7 701 605 hectares (6%) of land was unregistered trust state land in the Eastern Cape and 5 545 156 hectares in Limpopo. The Land Audit showed that individuals, companies, and trusts own 90% (89 523 044 hectares) of the registered land.

## 5. The total responsibility

Since the election of a democratic government in 1994, South Africa has implemented extensive reform to address inequalities in access to land. However, this has proved difficult and slow in the past but is changing. Land owners and developers have a responsibility to adhere and comply to laws and regulations that are specifically directed towards past inequalities and segregation and play a role on the transformation of the South African landscape.

<sup>1</sup> WEF (2019) Making Affordable Housing a Reality in Cities. Available (online): [http://www3.weforum.org/docs/WEF\\_Making\\_Affordable\\_Housing\\_A\\_Reality\\_In\\_Cities\\_report.pdf](http://www3.weforum.org/docs/WEF_Making_Affordable_Housing_A_Reality_In_Cities_report.pdf). (Accessed August 2020)