

Democratisation implied the involvement of new parties in power structures, broadening accountability and seeking legitimacy for political actors and their policies.

A sign of progress in the transition process would be the involvement of a diversity of interests in bargaining and decision-making. However, the imponderables which could scupper the process included the unresolved security situation; the unemployed/uneducated urban black youth; the business community and the durability of compromises that would have to be reached.

Looking ahead Slabbert speculated that in five years' time:

- the government was likely to be broad-based and stable;
- the security situation was likely to be politically stable, but with a high crime rate;
- the economy would be marked by a low growth rate;
- socially, privilege was likely to be non-racial and social spending would be high;
- internationally South Africa would be respectable;
- white domination was likely to be a thing of the past, but unless a democracy had been created, there would still be domination, this time by a non-racial group.

Speaking specifically about constitutional change and likely areas of disagreement, UCT law professor Dennis Davis said he was far less optimistic than Slabbert.

He said unless accountability was enforced or insisted upon now, there was little hope that any future constitution agreed upon through negotiation would endure.

Time and again, throughout the two-week series, the tenuity of the transition to the much vaunted "new democratic South Africa" was brought home.

"The jury is still out as to whether this government is committed to democracy," he added.

DAVIS said the all-pervasive issue and question was how to bring the present orgy of violence under control to begin the task of planting the seeds to build a nation with a tradition of sharing.

Two major issues would dominate the process of negotiation and transition — the security structures (army, police and civil service) and the economy.

He said a constitution was based on a shared need for survival. There could be no hope for a finely-worded constitution if there was no tradition of curbing the powers of leaders and society was based on the practice of resolving disputes by killing each other.

"You don't win political debates by crushing people physically, but by crushing their ideas," he said.

The issue of the security establishment needed to be brought under public scrutiny.

• See also page 10 for what Slabbert predicted five years ago

Towards a new land policy

Government's plans for land reform were criticised as inadequate to deracialise and stabilise land ownership in South Africa at the UCT Summer School.

By Sue Valentine

THE RIGHT to the land, unlike other rights, cannot be extended to the whole population through the mere stroke of a pen because land is finite. The reason the issue evokes such strong responses is because to give to some, one has to take from others.

This was one of the issues raised by Aninka Claassens, senior researcher in the Centre for Applied Legal Studies at Wits University, when she shared a platform with the Minister of Agriculture, Jacob de Villiers, during the focus on transitional issues hosted jointly by Idasa and UCT's Summer School in January.

While the minister was reluctant to give much away before the opening of parliament, Claassens argued strongly that government's plans for land reform were inadequate to meet the need for deracialising and stabilising a situation created by historical injustices and inequitable access to land.

In a country where less than 10 percent of the population owns more than 80 percent of the land, landlessness — and redistribution — are burning issues.

However, the right to own land, (a God-given, finite resource which predates the notion

of "property") should not degenerate into the absolute right of the individual to hold vast tracts purely on the basis of personal wealth.

Proposals that land would change hands on a "willing buyer willing seller" basis within a free market economy and President De Klerk's assurances to white farmers that their title deeds are secure meant that very few black South Africans would have money enough to purchase land at current market prices, she said.

"The right to buy land does not address the claims of communities who were forcibly remove...These people believe their land was stolen from them and must simply be returned, with reparation rather than a debit order."

CLAASSENS said that President De Klerk's guarantees to white farmers, guaranteed that South Africa remained in white hands.

However, the existing distribution of land — which government-proposed reforms would serve only to consolidate — was the result of wars of conquest, land grants to white settlers and a market which "was never free because the majority of the population was prohibited from buying or leasing land".

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CLAASENS: black people believe their land was stolen from them.

Following a meticulous account of the variety of conditions under which black people have access to that 13 percent of the nation's land accorded them (mostly through grants in the "homelands", or as labour tenants on white farms, or as urban tenants in the townships), Claassens proposed certain measures which would "level the playing fields".

A *land claims court* would adjudicate conflicting claims to land. For the criteria to be fair they could not refer only to title deeds (which would favour whites) or original ownership (which would favour blacks). Instead, underlying similar values such as birthright, length of occupancy, productive usage, security of tenure, protection of investments would support the claims of both African labour tenants and many Afrikaner families, argued Claassens.

Claassens suggested a system of *regulated land ownership* whereby the parameters within which land is owned are clearly defined. The values underpinning these parameters could include:

- ownership of land limited to areas which are occupied and productively used
- the amount of land owned by one person limited relative to the regional productive capacity of the land
- speculative holding of land be prohibited
- ownership be subject to proper care of the soil and decent treatment of people living on the land
- ownership of housing be limited to one residence

At pains to point out that such ideas were neither revolutionary nor unprecedented, Claassens said examples of land claims courts could be found in New Zealand, Australia and Canada.

Worldwide land ownership was regulated.

In South Africa zoning regulations limited the purpose for which land could be used and there were provisions for the expropriation of land for public purposes.

She argued that the difference between her proposals and those of the government did not lie in economic principles, but rather in political options. The choice was "whether to acknowledge the past and develop terms which address it, or to pretend the past can be wished away," said Claassens.

'Many black and white farmers have shown themselves willing to seek pragmatic solutions to the problems caused by SA's racial history'

She said in Zimbabwe, the Lancaster House Agreement had taken the second option, believing that land ownership could be deracialised by removing the prohibitions on black ownership and then leave the rest to the operation of the market on the "willing buyer, willing seller" basis.

By ignoring the past, 10 years later, the Zimbabwe government had now resorted to measures through which it may purchase half the white-owned land at government determined prices. If South Africa does not deal with its past there was the chance that it would follow in the same direction with a government which has appropriated too much power, making it open to abuse and corruption.

Claassens said that although Zimbabwe provided a closer precedent for South Africa than any other society, there were important differences.



DE VILLIERS :reluctant to say too much.

In Zimbabwe blacks and whites each had 50 percent of the land; in South Africa the split was 80 percent against 20 percent. In addition, in South Africa there is the legacy of the forced removal of 3,5 million people within living memory.

Offering an optimistic note, she added that there were "enormously positive factors" with which to build a new land policy in South Africa.

THERE was a tenacity in the way white and black farmers had clung to their land and many of these people had shown themselves willing to seek pragmatic solutions to the problems caused by South Africa's racial history.

Concluding her address, Claassens said the government's reform proposals would not work by anybody's standards.

The South African Agricultural Union will say it is unacceptable that the land is still full of squatters; white businessmen will say that blacks do not understand basic economic principles and will call for further educational programmes on "responsibility, reciprocity and rational economic choice".

At the same time, however, black people would continue to defy the law - whether out of conviction or necessity - in ever-increasing numbers. The present government had relied on the Illegal Squatting Act and physical eviction to contain the situation.

The only way to break out of the "racial straightjacket of our history" was to deracialise the terms of land ownership. According to Claassens it is possible to establish common baselines and a legal framework which would open the way for black people to realise their claims and their needs.