

# BLACK SOUTH AFRICAN INITIATIVES AND THE LAND, 1913-1948

Harvey M Feinberg<sup>1</sup>

## 1. INTRODUCTION

In 1912, two years after the formation of the Union of South Africa, John Dube, president of the newly inaugurated South African Native National Congress, told an African audience at Eshowe: "If we have no land to live on, we can be no people."<sup>2</sup> Dube's statement emphasizes a consistent theme of South African history from the end of the 19<sup>th</sup> century (at least): the incredible importance of land to black South Africans.

The debate over African ownership of land in the former Transvaal has gone through three different phases from the middle of the 19<sup>th</sup> century until 1936. Firstly, after the establishment of an Afrikaner state in the area which became known as the Transvaal or the South African Republic, the Afrikaners introduced a European system of land ownership, which included the right to buy and sell land, with deeds of sale, registration and transfer documents. This system was in sharp contrast to the African land tenure system where land belonged to the society and contributed to identifying the group, and could not be sold, but heads of households in good standing within the society had use rights. During the 19<sup>th</sup> century, if Africans sought to buy land under the European system, the Transvaal government refused to allow them to register the transfer of the land in their own names. Instead, the buyers had to transfer the land in the name of a sympathetic white (oftentimes a missionary). Later in the nineteenth century, transfers were required to be in the name of a government official, "in trust" for the African buyers.<sup>3</sup> Secondly, in the early 20<sup>th</sup> century, an African minister, Edward Tsewu, challenged this policy and won a judgment from the Transvaal Supreme Court on 4 April 1905. The court ruled that the Registrar of

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<sup>1</sup> Professor Emeritus of History, Southern Connecticut State University, New Haven, United States of America and Research Collaborator, Department of History, University of Pretoria. An earlier version of this paper was presented at the Northeast Workshop on Southern Africa, Burlington, Vermont, 17 October 2008. I wish to thank the discussant, Derrick Fay, University of California, Riverside, and my colleague, Harriet Applewhite, Southern Connecticut State University, for their particularly helpful suggestions which have improved the analytical focus of this article.

<sup>2</sup> National Archives of South Africa (hereafter NASA) NA 268, 3098/12/F639. Notes of a speech by John Dube at a meeting at Eshowe, 30 November 1912. In 1927, two white members of the Native Affairs Commission showed that they, too, understood Dube's point: "Land means everything to the Native people. It is the basis of their national life." NTS 8623, AW Roberts and P van Niekerk, NAC members, report on their 1926 tour, 11 January 1927.

<sup>3</sup> See J Bergh and H Feinberg, "Trusteeship and black landownership in the Transvaal during the nineteenth and twentieth centuries" *Kleio* 36, 2004, pp. 170-193.

Deeds must allow the transfer of land to Africans in their own names. The Tsewu decision opened the opportunity for Africans to buy farms more easily and, in fact, between 1905 and 1913, Africans purchased approximately 400 farms. During this time, buyers had the choice of registering the transfers in their own names or of continuing to use the “in trust” system.

Thirdly, after the creation of the Union of South Africa, certain groups within the white population, especially from the Orange Free State, agitated for an end to relatively unrestricted buying by Africans and that effort, together with other pressures, led the state to intervene. Parliament rushed the Natives Land Bill to enactment, bypassing normal procedures.<sup>4</sup> Edward Dower, the Secretary for Native Affairs, described the Natives Land Act as a “first step in the direction of territorial separation of black and white”.<sup>5</sup> Section 1 (1) of the Act prohibited Africans from buying land, and purchases of farms in the Transvaal and Natal slowed substantially until 1918. The Land Act did not stop buying completely because the same section of the Act included an exception clause, “except with the approval of the Governor General”, thereby allowing the state to approve African requests to purchase rural land. The number of purchases steadily increased between 1918 and 1936 as a result of a change in state policy and African land hunger.

The aim of this article is to examine African initiatives to buy land and African determination to do what was necessary, including following the rules established by a state agency, the Native Affairs Department (NAD), to obtain the required approval for their purchases. This is a story about African agency: initiative in identifying land for sale, success in persuading the state to approve a purchase, persistence if the answer was no, and ingenuity in raising the money to meet their financial obligations. The following topics will be discussed: land hunger and African buyers and the buying process, including raising money or finding mortgages to pay for the land and to pay off debts.<sup>6</sup> In addition, a picture emerges of the NAD that represented the state. This Department took a role in the purchasing process through aid to the purchasers, protecting them from exploitation by potential sellers or mortgage providers. Department officials also intervened to prevent loss due to foreclosure. State officials demonstrated an unexpected respect for many potential African buyers and landowners. This article describes a history of Africans determined to shape their own destiny by achieving their goals through challenging the constraints

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<sup>4</sup> For a full discussion of the passage of the Natives Land Act, see HM Feinberg, “The Natives Land Act of 1913 in South Africa: Politics, race and segregation in the early 20th century”, *International Journal of African Historical Studies* XXVI (1), 1993, pp. 65-109.

<sup>5</sup> NASA, LDE 726, 12473, Volume 3, memorandum by E Dower, “Natives Land Act”, 12 November 1913.

<sup>6</sup> As will be seen below, this article depends heavily on official and private letters, reports and other documents written by Europeans. Materials written by Africans tend to be very limited. Nevertheless, the limited sources revealing the words and intentions of Africans themselves show people with a clear sense of their own autonomy and their own agency.

imposed by a law, the Natives Land Act, which promoted an important aim of whites early in the history of the Union of South Africa: territorial segregation.<sup>7</sup>

The main actors in these developments were the following: African buyers, white sellers, officials working for the NAD, either in the field or at the headquarters in Pretoria, the providers of mortgages, and white owners of neighbouring portions of land who were, occasionally, asked if they approved of a sale. African rural landowners included men and women who farmed or kept livestock or both. Most African owners lived on the land, but a portion of the owners lived in the cities. This story develops because the Natives Land Act did not set aside enough land for the African majority (only seven percent of the area of South Africa) and Parliament failed to add more land during the 1910s. Consequently, state officials, under pressure from prospective African buyers and fearing the consequences of not acting, used the exception clause to attempt, administratively, to meet the land hunger of Africans.<sup>8</sup> Thus, the aftermath of the Natives Land Act, especially after 1918, became a time when Africans purchased over 3 200 farms and lots, defeating the goals of the promoters of the Natives Land Act.

The extant records do not explain why the Land Act included that exception clause. The reasons are believed to revolve around the following: Firstly, in 1913, officials knew that the reserves (just over seven percent of South Africa), which the Land Act identified as “scheduled areas”, were overcrowded and that Africans needed more land, beyond the 10 million morgen (about 21 million acres; one morgen equals about 2,1 acres) the Land Act set aside. Secondly, numerous sources, in 1913 and later, stated that the Natives Land Act was a temporary measure.<sup>9</sup> Thirdly, Section 1 (1) of the Act also included the words “until Parliament, acting upon the report of the commission [the Natives Land Commission] appointed under this Act, shall have made other provision”. Fourthly, after Parliament had passed the Land Act, the Natives Land Commission sat between 1913 and 1916, hearing testimony from whites and blacks, and determining the amount of land that should be set aside for

<sup>7</sup> HM Feinberg and A Horn, "South African territorial segregation: New data on African farm purchases, 1913-1936", *The Journal of African History*, forthcoming.

<sup>8</sup> Politicians and others, at various times, referred to fears about African reactions to the state's segregation policies and other injustices within South Africa. Occasional urban riots fuelled these concerns. See, for example, NASA, The paper of Jan Smuts, John X Merriman – Jan Smuts, 22 February 1917, marked "Private": "Botha has his Native Land Bill which will hopefully not result in a Native rising." NASA, NTS 8615, 38/362, JBK Farrer, Magistrate, Estcourt – CNC, Pietermaritzburg, 27 September 1927. In the opening paragraph, Farrer refers to a "crisis" relating to the land question. In addition, "The devil we know", editorial, *Umteteli Wa Bantu*, 12 April 1924, p. 2; and "The fear complex", editorial, *Umteteli Wa Bantu*, 24 May 1924, p. 2. See also, DDT Jabavu, "Native unrest", paper read before the Natal Missionary Conference, July 1920. Quoted in T Karis and G Carter, *From protest to challenge* 1 (Stanford, 1972), pp. 118-125.

<sup>9</sup> For example, see NASA, LDE 726, 12374, Vol. 3. Printed statement, "Natives Land Act, 1913", 12 November 1913. Signed by Edward Dower, Secretary for Native Affairs; NTS 3431, 35/308, "Memorandum on the Natives Land Act, 1913, and subsequent administrative policy", ND, no signature or initials at the end of the document. With a letter, H Rogers – Secretary for Native Affairs [SNA], 9 June 1923. Also, "HR" is written at the top of page 1.

Africans. These points suggest that the members of Parliament may have hesitated to make the purchase prohibition permanent and inflexible before more land was set aside. The Prime Minister's introduction of the Native Affairs Administration Bill in 1917 to confirm the recommendations of the Land Commission's report (1916), which identified 8,5 million morgen for African use, reinforces this theory: this Bill did not include an exception clause. However, the 1917 Bill was not enacted, and Parliament did not pass a new land law until 1936 (the Native Trust and Land Act).<sup>10</sup> When Parliament failed to pass a new land law, key state officials, including Prime Minister Louis Botha, decided to consider African requests to buy rural land, and the number of approvals to buy farms and lots increased as time passed.<sup>11</sup>

## 2. LAND HUNGER

Those Africans who chose to buy had many specific reasons for wanting to own land. Firstly, the need for more land was substantial. Black South Africans had lost overwhelming amounts of land during the 19th century. And, the need increased during the 20th century because of population growth and the increase in the number of livestock (especially cattle, sheep and goats) Africans owned. The census of 1911 estimated an African population of 4 019 006 (67,28% of South Africa's population), whereas by 1927, the officials estimated that there were 5 105 000 Africans in the Union.<sup>12</sup>

In 1913, during the debate over the Natives Land Bill, various officials admitted that many of the reserves were overcrowded.<sup>13</sup> After 1913 and into the 1920s, Africans complained that overcrowding was increasing, and most South Africans

<sup>10</sup> After the second reading of the Native Affairs Administration Bill, the Select Committee on Native Affairs took testimony from a large number of white and black witnesses and then evaluated the Bill. The Committee recommended that the state appoint provincial committees to evaluate the Beaumont Commission's report. Five committees submitted revisions in 1918, but the Bill was not reintroduced in Parliament. The debate over more land for Africans was renewed when the JBM Hertzog ministry introduced the Natives Land Act Amendment Bill in 1926 and only ended when Parliament passed the 1936 Native Trust and Land Act, which promised the eventual availability of 13,7 percent of the land for about 70 percent of the population. It should also be noted that the Land Act essentially only applied to the Transvaal and Natal. The Cape Province was specifically excluded because ownership of land could be used to meet the economic basis for voting privileges, and the Orange Free State did not allow Africans to buy land, even before 1913. In addition, the Natives Land Act only applied to future purchases; the Act was not retroactive.

<sup>11</sup> NASA, LDE 726, 12473, Edward Dower, memorandum to the Minister of Native Affairs, titled: "Administration of the Natives Land Act, 1913", 14 June 1918.

<sup>12</sup> NASA, NTS 3519, 353/308. Table dated April 1927.

<sup>13</sup> See, for example, NASA, GG 1547, 50/662, Edward Dower, memorandum, for the Governor General [GG] (with letter, Dower – Horsfall, GG's Secretary), 29 May 1917. NTS 3547, 519/308. NC (H Rose Innes) – SNA, 3 October 1917. NTS 3425, 24/308, Part 1, MacRobert & De Villiers – SNA, 4 July 1922. GG 1568, 50/1414, petition "by the Native Community of Zeerust Town and Marico District" – the GG, 21 August 1931.

(black and white, and especially state officials) agreed.<sup>14</sup> Africans also declared that the new land that the Natives Land Commission and the local committees recommended (between 1916 and 1918) for rural Africans was inadequate for at least two reasons: the poor quality of some of the land and the genuine concern that the additional 7,5 to 8,5 million morgen which the Commission and the committees had recommended was not enough. Human congestion on the reserves, together with increasing numbers of livestock led to deterioration of the land in many African areas, and Africans continued to emphasize their need for more cultivation and grazing space, as well as the crucial access to water.<sup>15</sup> African leaders also condemned the very high density of population in African areas as opposed to white areas.<sup>16</sup> H Rose Innes, an attorney, summed up the situation by the mid-1930s: "It is well known to everybody connected or acquainted with Native Affairs Administration that there is a great and unsatisfied demand for land on the part of Natives in the Transvaal."<sup>17</sup>

In addition to the need for more land for grazing or cultivation and the need to escape overcrowded reserves, certain Africans self-consciously made statements reflecting agency when they justified their need for land. One group yearned for security of tenure, to avoid the legitimate worry of being forced from a farm by the white owner.<sup>18</sup> A few people looked for land "to live on where they can work out their own destiny", rather than become labour tenants in order to remain on a

<sup>14</sup> See: Sol Plaatje, pamphlet, *Some of the legal disabilities suffered by the native population of the Union of South Africa and imperial responsibility* (London, 1919) in B Willan, ed., *Sol Plaatje, selected writings* (University of Witwatersrand Press, 1996), p. 251; AB Xuma, *Bridging the gap between white and black in South Africa*. Address to the Conference of European and Banta Christian Student Association at Fort Hare, 27 June–3 July 1930, p. 7.

<sup>15</sup> NASA, NTS 3619, 1073/308, file 1, Additional Native Commissioner to SNA, 2 October 1929. One of the European owners wants to lease 200 morgen @ £72 per year to eight Africans, because of "the need of the tribe for more and yet more arable land as each succeeding year comes round".

<sup>16</sup> Testimony of Rev. Abner Mtinkulu, 30 May 1927. Report of the Select Committee on the subject of the Union Native Council Bill, Coloured Persons Rights Bill, Representation of Natives in Parliament Bill, and Natives Land (Amendment) Bill, Cape Town, 1927, p. 262. Mtinkulu said: "Coming to the question of land, the ratio at present is 105 morgen to every European and 3 morgen to every native." Rev. Mtinkulu was ordained in the Wesleyan Methodist Church, but eventually left this church to become a leader in the independent Bantu Methodist Church.

<sup>17</sup> NASA, NTS 3624, 1130/308, H Rose-Innes (attorney) – SNA, date unclear [1935?], Elandsfontein 374.

<sup>18</sup> NASA, NTS 3436, 45/308, Sub-Native Commissioner, Hammanskraal – SNA, 10 September 1921, in reference to the purchase of Witlaagte 445 by a group of Ndebele led by Witbooi Mahlangu. According to the Sub-Native Commissioner, "the farm Rust der Winter No. 508 upon which Witbooi Mahlangu and most of his people are resident has recently changed hands, in consequence of which the natives have been given notice to quit or submit to conditions by no means acceptable; one being that they are not allowed grazing for more than 200 head of cattle and 30 sheep and goats. Another, that they may not cultivate more than 50 morgen of ground. I understand the new owner is endeavouring to establish a European settlement on the holding, and is not keen on having any native squatters thereon."

white-owned farm.<sup>19</sup> Communities wanted their independence: "Owing to frequent disputes with the farm owner, the Natives wish to obtain ground of their own." George Masemola bought a portion of Vlakraagte 284 to have land for his cattle and a farm to live on eventually. Others had more traditional African aims relating to kinship and history when they wished to bring people led by a *kgosi* together on the same piece of land;<sup>20</sup> or when the land was "ancient tribal land", and the graves of the ancestors and *kgosi*, "which we hold sacred", were located on selected farms.<sup>21</sup> Consequently, as we shall see, potential African buyers were willing to pay high prices for good land which they prized.

### 3. THE PROCESS

There is no question that Africans were ready to act as agents who could shape their own destinies. The buying process demonstrates African initiative and included the following steps, some well documented, others less so: Firstly, African buyers, individuals, partners, or "tribal" groups, identified a farm or portion of a farm which was for sale. Once knowledge about an available piece of land became known, individuals may have looked for partners to join in the purchase effort, probably to help raise the money to buy the land. These partners might be a heterogeneous group of men and women, or they might be from the same ethnic group buying the land for their own use and not for the society.<sup>22</sup> Secondly, the prospective buyer(s), or their legal representative, negotiated with the owner. After they had decided on a price and other details, but before the buyers paid any money, they were expected, because of the Natives Land Act, to approach officials from the Native Affairs Department (NAD) to request approval of the purchase. However, it appears that certain buyers agreed to a deed of sale and made a down-payment before approaching the NAD.

<sup>19</sup> NASA, LDE 988, 18909, SNA – Secretary for Lands, 31 July 1920. See also NTS 3561, 613/308, detached clerk [EW Lowe], Hammanskraal – SNC, 11 September, 1928: "... others determined to acquire their own ground to become free of the yearly farm service of 90 days". See also South African Library, Merriman Papers, MSC15, Document 230, "Native Affairs Administration Act", by W Poll, 13 April 1917. "Practical administrators of native affairs know that the really pressing point is relief from the unsatisfied demand for land where natives can find ground on which they can keep their families and stock, without having to sell their labour under conditions of duress to white land holders."

<sup>20</sup> NASA, NA 248, 3740/12/F596, SNC, Rustenburg – SNA, 26 April 1921. NTS 3431, 36/308, H Rose-Innes – SNA, 30 July 1926.

<sup>21</sup> NASA, GG 1547, 50/662, Chief Mamabolo – GG, 3 October 1916. "We do not cast longing eyes to the land of our forefathers, except that in the neighbourhood of Haenertsburg in one of the farms are the graves of the earliest chiefs, which we hold sacred." NTS 3619, 1073/308, file 1, memorandum, initialled by HR, 1 November 1930 [handwritten], Elandsfontein 374. The Additional Native Commissioner "has gone fully into the matter and has carried out an inspection 'in loco'. There seems no doubt that this particular farm is regarded by the Natives as their ancient tribal land."

<sup>22</sup> To date, I have not found any information about the formation of these syndicates.

Some even continued to pay for the land during the evaluation process, which they were not supposed to do and which action angered NAD officials.<sup>23</sup>

Thirdly, the buyers contacted a Native Commissioner (or an equivalent official) in the area where the land was located, asking for the acquiescence of the state to the purchase. At that time, information about the transaction became part of the written record. The Native Commissioner and the Secretary for Native Affairs and his staff in Pretoria evaluated the request. If he favoured the request, the Native Commissioner became an advocate for the buyers.<sup>24</sup> As part of the approval process, NAD officials, hoping to reduce the risks of purchase, scrutinized the deeds of sale, looking for inappropriate clauses relating to price, payment terms, risks of monetary loss if the Africans defaulted, and the terms of transfer. Officials often demanded changes in agreements for the benefit of the African buyers before sanctioning a purchase, and sometimes forced the removal or change of a clause, or insisted on the insertion of a clause to protect the buyers.<sup>25</sup> By 1921, the State demanded that Africans make a down payment of 50 percent before the NAD would sanction a purchase.<sup>26</sup> On occasion, the Secretary for Native Affairs refused to approve a purchase on the grounds that the price was too high, the Africans had insufficient funds or potential to meet their financial responsibilities, or that the buyers were too heavily in debt already. However, with the support of the Native Commissioner, the buyers might persist and request a re-evaluation of their application, several times if necessary. And, officials in the Department might be persuaded to modify a negative decision in extenuating circumstances. For example, a modification of a negative decision might occur because the African buyers (and white sellers?) may have maneuvered officials into reluctantly approving a purchase by paying for the farm while waiting for the bureaucrats to decide, leading the Secretary for Native Affairs or his main subordinates to fear that the prospective buyers might suffer substantial loss if the Department rejected their application. Or, prospective African buyers may have given the seller a large down payment before approaching the Department, but

<sup>23</sup> NTS 3450, 82/308, Native Commissioner (and Magistrate) – SNA, 18 November 1924. He agrees that the seller clearly violated the Natives Land Act - "a clear contravention. I am afraid it is becoming the practice with some would-be sellers of land to natives to carry the transaction to a point where the natives are definitely compromised and in danger of losing money they have already paid over in anticipation of the purchase being sanctioned, and then facing the Native Affairs Department with an accomplished fact, hoping no doubt that in order to protect the natives and prevent them losing their money, the Department may be prepared to sanction a purchase which otherwise they might not have done. This practice should be severely discouraged."

<sup>24</sup> The Native Commissioner in Pietersburg wrote favourably about the buyers and "strongly recommended" approval of their application. NASA, NTS 3548, 522/308, Native Commissioner – SNA, 19 January 1920, Bouwlust 1001.

<sup>25</sup> For example, the seller gave an oral commitment that a commission would not be required; the NAD demanded that this arrangement be written into the deed. NASA, NTS 3558, 592/308, Sub-Native Commissioner, Pretoria – SNA, 2 July 1926, Rooikoppen 477, Ptn. D.

<sup>26</sup> University of Cape Town Archives, Herbst Collection, BC 79, D22.1. "Native Occupation of Land", 24/10/21 (24 October 1921). Typed. Writer not identified: no signature or initials. (But, handwritten on the first page: "Garthorne".)

the seller may have been in a precarious financial condition and unlikely to be able to return the money if the sale were not approved.

Officials approved most applications, especially after 1918. Once the NAD approved a request, the application went to the Executive Council, which then recommended action to the Governor General. The process could be achieved in a matter of months or it could drag on for several years if the prospective buyers (and, sometimes, the sellers) appealed against an unfavourable decision.

Why did NAD officials pursue a more solicitous approach? They worried about sellers taking advantage of the Africans, who officials often saw as unsophisticated. These same men were also trying to deter Africans from using lawyers, believing that it was better to come to NAD officials because their assistance was free and presumably unbiased. In addition, the NAD was attempting to prevent difficulties and thereby keep Africans out of court, a very costly option. Shortly before Parliament passed the Natives Land Act, a Sub-Native Commissioner summed up the official attitude:

“The point is whether assistance in any way is to be rendered to native Chiefs who wish to purchase farms. The difficulty is that however much it may be opposed to our present policy there is no legal means [before 19 June, 1913] of preventing natives from purchasing individually; and if we refuse to give them permission or assistance they proceed without it and obtain the end which we aimed at preventing, though they involve themselves in endless legal difficulties and complications.” He then asks: because it “seems to be a matter for consideration seeing that they cannot be prevented from buying [would it not be] better policy to accord them any advice and assistance they may require until the purchase of land by natives is definitely regulated by law?”<sup>27</sup>

#### 4. BUYERS

Both before and after 1913, there were many willing African buyers, for reasons described above. There were also many willing sellers, individual white landowners who wanted or needed to sell their land between 1913 and 1936.<sup>28</sup> Approximately 288 white sellers of farms in the Transvaal were identified, some of whom sold more than one portion of a farm.<sup>29</sup> This number includes 32 women. Contrary to the perceptions of some historians, very few businesses sold farms to Africans (15 or

<sup>27</sup> NASA, NA 248, 1008/13/F596, SNC – SNA, 19 March 1913.

<sup>28</sup> The terminology was borrowed from the post-1994 period, when the South African state has promoted a policy of “willing-seller” (whites) and “willing-buyer” (Africans) in order to increase the number of African rural landowners. Department of Land Affairs, *White Paper on South African Land Policy* (Pretoria, 1997), p. vii.

<sup>29</sup> These data have been collated from records in the Library of Parliament, Cape Town.



16), although they did sell lots. Many of these sellers of farms were individuals who were in significant financial distress, perhaps facing bankruptcy.<sup>30</sup>

On the other hand, Mrs WH Brink and her husband, the owners of Klipfontein 482, resented the legal situation with their African neighbours on an adjoining farm where they had “a servitude of water furrow and access over the property” and, according to their attorneys, the Brinks “find it very inconvenient and difficult to carry on further farming operations under these circumstances”.<sup>31</sup>

African buyers of farms fell into several categories: individuals; small groups of partners, (between three to perhaps 15 in number, but frequently no more than six); and large groups or syndicates (sometimes including 50 to 100 or more partners).<sup>32</sup> Individuals or groups constituted more than half of the buyers.<sup>33</sup> The largest number of buyers fell into the category of so-called “tribes”, a category complicated by the ambiguity of its meaning. Between 1913 and 1936, the word “tribe” could refer to a traditional society, led by a chief; or to a group of buyers, from different ethnic groups, whom the NAD required to become a “tribe” to gain approval to buy a farm. The leader of such a group was designated as a headman. Complicating this identification is that the state, in the later 1920s and early 1930s, required buyers from the same society or “tribe” who bought a portion of a farm on their own to transfer the property in the name of the “tribe” but with the right of exclusive ownership and use rights for those who paid for the property. These exclusive rights were written into the transfer deed. The various “tribal buyers” amounted to less than half of the buyers.<sup>34</sup> The discussion in this article, however, gives greater emphasis to individuals and groups of partners.<sup>35</sup>

<sup>30</sup> NASA, NTS 3444, 62/308, Acting SNA, Edward Dower – Minister of Native Affairs, 30 January 1912, Buffelsdrift 131 and Haakdoornbult 344 (“financial difficulties”); NTS 344, 60/308, Acting Sub-Native Commissioner – SNA, 30 January 1924, Brakkuil 893; SNA – Sub-Native Commissioner, Rustenburg, 4 February 1924; JF Schutte – Sub-Native Commissioner, Rustenburg, 18 February, 1924. The owner’s property was “heavily mortgaged”, and she was on the verge of bankruptcy, with many creditors. NTS 3450, 82/308, Detached Clerk [LF Goldsworthy], Rayton – SNC, 8 August 1924, Portion C, Kuilsrivier 12. The owner, he has heard, is in “straightened circumstances”. NTS 3619, 1073/308, file 1, Additional NC – SNA, 28 October 1930, Elandsfontein 374. Here the owner was “under serious financial embarrassment”.

<sup>31</sup> NASA, NTS 3579, 780/308, Dyason & Metelerkamp – SNA, 8 August, 1932. The servitude gave the Africans a legal right to use a water source on the Brinks’ land.

<sup>32</sup> These large groups sometimes signed a “memorandum of agreement”, which set out rules about their relationship as co-owners and created an executive committee to represent the group. Reference to memoranda of agreement can be found in a 1921 document.

<sup>33</sup> Based on an analysis of data in the Library of Parliament.

<sup>34</sup> The percentages have been rounded off. It should be emphasized that Africans rarely sold land which they had purchased. The data from the Library of Parliament yielded the following information: between 1913 and 1936, 28 African-owned farms or portions of farms were sold to Europeans, one was sold by the sheriff, and one portion was sold to a mission. These sales represent a very small percentage of loss to African owners.

<sup>35</sup> Africans purchased farms in 12 Transvaal magisterial districts. However, five districts accounted for most of the purchases (over 83 percent): Pretoria, 27 percent; Rustenburg, 20 percent; Pietersburg, 19 percent; Lichtenburg, 10 percent; and Middelburg, 7 percent.

Many syndicates included ordinary rural individuals; some were literate, others not. Women were sometimes among the partners. Native Commissioners were required to evaluate prospective buyers of land, and they often commented on the personal characteristics of the applicants. One man examined the “financial position” of seven of the prospective buyers of a portion of Elandsfontein 374: collectively, they owned 145 cattle; three had savings bank accounts with deposits of £50, £55 and £30 respectively, and one member of the group, a woman, was “in regular employment in Pretoria”. He also noted that the “remainder of the proposed purchasers are in regular employment and are stated to be steadily saving against the time when it is hoped by them that they will be allowed to purchase”.<sup>36</sup> Another official described a group of African owners as “hardworking, respectable persons, who make good use of the opportunities and have made every endeavour to meet their obligations”.<sup>37</sup>

The Native Commissioner in Pietersburg told the Secretary for Native Affairs that “the financial position of the purchasers is very sound and the farm has already been paid for”. He then added that one of the prospective buyers, “Darius Manthata, is a leading educated Christianized native of the Berlin Mission, and it is desired that this farm [Bowlust 1001] should be purchased by educated Natives for their advancement, independent of any tribal ties. . . . The application is strongly recommended.”<sup>38</sup>

In 1924, an official wrote that the Africans trying to buy portion C of Kuilsrivier 12, “should find no difficulty in meeting their obligations. They have reaped fair crops this year and own 800 head of cattle and 1 200 small stock.”<sup>39</sup> And, the 36 Africans asking approval to buy Rooikoppen 477 were “de-tribalised Natives of a progressive type”, according to a high ranking NAD official.<sup>40</sup> The five purchasers of a portion of Koekoek 1007 were deemed fit to meet their financial liability, not only because they owned “stock”, but also because some of the partners had also invested in two other farms, Bowlust 1001 and Brilliant 1000, and those farms had already been paid for.<sup>41</sup>

<sup>36</sup> NASA, NTS 3619, 1073/308, file 1, Additional NC – SNA, 21 August 1931, Elandsfontein 374.

<sup>37</sup> NASA, NTS 3619, 1073/308, file 1, CNC – SNA, 8 October 1937, Elandsfontein 374.

<sup>38</sup> NASA, NTS 3548, 522/308, Native Commissioner, Pietersburg – SNA, 19 January 1920, Bowlust 1001.

<sup>39</sup> NASA, NTS 3450, 82/308, Detached Clerk [LF Goldsworthy], Rayton – SNC, 8 August 1924, Kuilsrivier 12, portion C.

<sup>40</sup> NASA, NTS 3558, 591/308, GA Godley – SNA, 20 February 1925, Rooikoppen 477, Pretoria.

<sup>41</sup> NASA, NTS 3546, 507/308, Detached Clerk, Blaauwberg: Farm: Koekoek 1007. Information about the farm, based on a form distributed in 1919. This information was dated 1 June 1928. See also: NTS 3562, 614/308, Acting Additional NC, Pretoria – SNA, 29 April 1929, Kalkbank 112. He describes the 31 Africans concerned as men “well known to me and are men of stability with a good sense of responsibility”; and NTS 3579, 780/308, Acting Additional NC – SNA, 20 December 1932, Klipfontein 482. He described nine of the purchasers as appearing to be “a go-ahead intelligent type of Native”.

Independent observers also spoke positively of prospective buyers. In 1928, a representative of the law firm, De Villiers & Pickard, who were representing the seller (not necessarily an unbiased source) wrote that they knew the buyers from previous transactions and admired the way they had “fulfill[ed] their obligations” in previous transactions. The Africans had “scrupulously carried out their undertakings”. In addition, “if we remember correctly”, the Africans who bought the last property paid off their mortgage “long before it was due”. Finally, he wrote, “we have been connected with many purchases by natives and can safely state that the natives concerned in the present transaction are of the best class in every respect, in fact we know of no other body of natives that will so scrupulously fulfil their obligations”.<sup>42</sup> These field officers were describing the prospective buyers in recognizable terms for Europeans relating to character, attitudes and qualifications: they were viewing the Africans like Europeans in their ways and characteristics, individuals who saved their money in banks, had regular jobs, worked hard, were “respectable”, educated, “detrified” and “progressive”. No stereotyped images of the “tribal” African appeared in these letters.

Less often were officials critical of prospective buyers, in a manner similar to what the Magistrate said about the Bakwena who lived on Elandsfontein 204. In 1920, he informed the Secretary for Native Affairs that “my experience of the Bakwena is that they are the slackest of all Native Tribes in this District and under the weakest of domestic control, although under the leadership of a Chief endowed with a liberal measure of education”. Furthermore, this official believed that the Bakwena did not fully understand the implications of their substantial debts, when he referred to their “large financial obligation which they appear to so lightly entertain”.<sup>43</sup> Eight years later, another official warned, in the context of the Bakwena’s continued debts, that “any sympathetic assistance extended to these natives will not be appreciated nor will the prospects be in any way improved of inducing them to wipe off their liability”.<sup>44</sup>

Among better known buyers of land, I have identified a president of the African National Congress (ANC) (1917-1924), SM Makgatho;<sup>45</sup> one of the founders of the ANC, PKI Seme, was a director of the African-owned land company (founded in 1913), the South African Native Farmers’ Association of Africa Limited, which sold lots on Driefontein 331, Daggakraal 161 and Vlakplaats 340 in Wakkerstroom,

<sup>42</sup> NASA, NTS 3608, 980/308, De Villiers & Pickard (Lawyers) – SNA, 23 February 1928, re 700 morgen by Ptn D, Buffelsdoorn 185.

<sup>43</sup> NASA, NTS 3426, 26/308, Magistrate and NC, Pretoria – SNA, 3 August 1920, Elandsfontein 204.

<sup>44</sup> NASA, NTS 3426, 26/308, Additional NC, Pretoria – SNA, 7 November 1928, Elandsfontein 204, portion A.

<sup>45</sup> See the *New Dictionary of South African Biography* 2 (Pretoria, 1999), pp. 86-87.

beginning in 1924.<sup>46</sup> Less well known is George Shaw Masemola (born about 1893) who owned portions of Toitskraal 421 and Vlaklaagte 284. Masemola taught at a Wesleyan mission school in Warmbaths. Married with three children, his salary was £76 in 1926, and his property included ten oxen and 20 cows and calves. He was buying the land, according to the Magistrate in Nylstroom, “so that he may have a place for his stock and a place where he may eventually settle”. The Magistrate also noted that “Masemola struck me as very intelligent and quite capable of deciding on a transaction such as this”.<sup>47</sup> In 1943, when Masemola was threatened with the expropriation of his land, Senator JD Rheinallt Jones, a founder of the South African Institute of Race Relations (to whom Masemola had appealed for help) wrote: “I may say that Mr Masemola and his wife are hard-working people who have sacrificed for the education and upbringing of their children, and who are highly respected. Mr Masemola is a man of considerable influence.”<sup>48</sup>

Jan Boyane Setole (died 18 April 1942) bought 132 morgen on Honingsnestkrans 121 in 1910 and paid £500 for the land. He did something unusual among African owners: he sold his land in 1924 (for £800). However, at about the same time, he purchased 300 morgen of another farm, Haakdoornfontein 77, for £600.<sup>49</sup> Setole paid £400 down for this second farm and obtained a mortgage for £200 at eight percent interest, to be repaid in December 1926. But, drought became a problem in 1926, and farmers like Setole suffered crop failures (“owing to the failure of his crops consequent upon the drought”), and Setole was unable to complete the payments.<sup>50</sup> Fortunately for him, the bondholder did not demand immediate payment or call in the loan. Still in debt in the early 1930s, Setole became unusual for another reason: he was one of the few Africans who was able to obtain a mortgage from the Land and Agricultural Bank, a semi-independent state institution. This loan to an African became possible only because of a new law passed in 1933, the Farm Mortgage Interest Act, which was designed to help farmers, white and black, suffering reverses because of the Depression. Setole took advantage of this opportunity to take out a new mortgage to pay off the mortgage he obtained in 1925 and to benefit from a reduced interest rate, only 5,5 percent. At the time of his application for the Land

<sup>46</sup> See *Ibid.*, pp. 205-206; also T Karis and G Carter, *From protest to challenge 4* (Stanford, 1977), pp. 137-139.

<sup>47</sup> NASA, NTS 3535, 441/308, Magistrate, Nylstroom – SNA, 27 August 1926. The Magistrate noted that he had interviewed Masemola (as part of the screening process for Africans seeking approval of their request to buy land).

<sup>48</sup> NASA, NTS 3535, 441/308, JD Rheinallt Jones – SNA, 22 October 1943. George Masemola's father, SM Masemola, also purchased portions of Toitskraal and Vlaklaagte. In 1927, the elder Masemola was 63 and a widower, who had eight children. He owned 20 oxen, 40 cows, 16 calves, 26 donkeys and desired to buy portion C of Vlaklaagte because he wanted "to provide for his children and to have a place for his stock". NTS 3535, 441/308, NC, Nylstroom – SNA, 26 February 1927.

<sup>49</sup> Transfer was completed in 1925. See NASA, NTS 3513, 316/308.

<sup>50</sup> NASA, NTS 3513, 316/308, SNC, Pretoria – SNA, 14 April 1926.

Bank loan, a NAD official described him as a “progressive native farmer who earns his living by farming and deserves to be assisted”.<sup>51</sup> He finally paid off this second loan in late 1938 or early 1939.<sup>52</sup>

In summary, the vast majority of African buyers and owners were men, but there were female owners, some as partners in the purchase, but others who had inherited their rights from their husbands. It can only be assumed that many owners were illiterate farmers and labourers. Where information is available about prospective owners, the following seems apparent: some were literate, Christian, and living outside of the traditional community. When the weather cooperated, the farmers’ cultivation efforts earned good yields. A few owners worked in the cities; officials usually believed that applicants they recommended were hard-working and could be relied upon to pay their debts. Finally, H Rose-Innes identified a particular group of African buyers, state employees, noting that “(t)he demand [for buying land] to a considerable extent comes from Natives who have retired or contemplate retirement from the Police and other State Departments”.<sup>53</sup>

Tens of thousands of black South Africans purchased farms and lots in rural areas of the Transvaal (and Natal) from the late 19<sup>th</sup> century to 1948, ranging in size from a few morgen to several thousand morgen. In general, prices ranged from £1 to £3 per morgen. Of course, depending on the size of the portion or the full farm or the quality of the land or the availability of water, Africans might pay only a few hundred pounds or they might pay as much as £4 000 to £5 000 for their land.

Transvaal Africans raised money to buy farms in several ways, for example by selling their cattle. Solomon Makapan agreed to buy a farm from DJ Erasmus for 800 cattle, valued at £4 000.<sup>54</sup> The buyer of a portion of Kuilsrivier 12, Chief Mashung, sold cattle in 1923 for the down payment (earning £210.12.5) and again in 1924, this time for £180.<sup>55</sup> The African buyers of portion D of Buffelsdoorn 185 were waiting to sell cattle to raise the down payment until their cattle were “in sufficiently good condition to command a decent price”.<sup>56</sup> And, in 1930, the Assistant Native Commissioner noted that the African buyers of a portion of Kalkbank 112 “denuded

<sup>51</sup> NASA, NTS 3513, 316/308, Additional NC, Hammanskraal – Additional NC, 11 October 1934.

<sup>52</sup> NASA, NTS 3513, 316/308, Additional NC, Hammanskraal – NC, 16 January 1939.

<sup>53</sup> NASA, NTS 3624, 1130/308, H Rose-Innes – SNA, 1935, Elandsfontein 374. He added: “It has been represented to me by men of this class as also by other workers in the larger towns of the country that residence in these towns or the outskirts thereof do (*sic*) not appeal to them as desirable homes for their women folk and other dependents.”

<sup>54</sup> NASA, NTS 3444, 62/308, Stegmann & Roos (Solicitors) – Acting SNA, 23 January 1912. Makapan file. See also NTS 3436, 45/308, Sub-Native Commissioner, Hammanskraal – SNA, 10 September 1921, Witlaagte 445. The Africans attempting to buy a portion of Witlaagte 445 offered 600 head of cattle for sale.

<sup>55</sup> NASA, NTS 3450, 82/308, Detached Clerk, Rayton – Sub-Native Commissioner, 8 August 1924. Also, *Ibid.*, 29 September 1924, Kuilsrivier 12. See also NTS 3541, 484/308, Detached Clerk, Hammanskraal – Sub-Native Commissioner, 12 November 1926, Como 326.

<sup>56</sup> NASA, NTS 3608, 980/308, De Villiers & Pickard – SNA, 23 February 1928, Buffelsdoorn 185, Ptn D.

themselves of most of their stock when making provision for the initial payment of £1 000".<sup>57</sup>

Africans also used (or hoped to use) their crop surpluses to raise money to help meet financial obligations. For example, the co-owners of Klipfontein 196 used 229 bags of mealies to help pay a loan instalment.<sup>58</sup> And Lucas Napo from Kalkbank 112 told the Native Commissioner at Hammanskraal that crops were being reaped and that they should be able to make a "substantial" payment soon.<sup>59</sup> The high quality "turf soil" on Elandsfontein 374 normally produced in "good seasons a heavy yield of maize and kaffir-corn" and the potential land buyers were relying on these crops "to pay off the bulk of the purchase price".<sup>60</sup> And, the owners of a portion of Buffelsdoorn 185, after they had missed an interest payment, requested more time, to the end of July, "until they reap their crops and realise on same".<sup>61</sup> Jan Setole blamed his inability to keep up with his mortgage payments on "the failure of his crops consequent upon the drought".<sup>62</sup> Finally, potential buyers raised money to buy land working for wages, either on farms or in the cities, but the manuscript record is generally silent on the details of this phenomenon.

In sum, a large number of Africans raised substantial amounts of money to buy farms. A few raised the full price of the purchase by the time of the closing of the transaction, such as the buyers of Brakkuil 893, who paid the full amount for the farm, as well as the transfer costs and their share of the surveyor's fees,<sup>63</sup> and

<sup>57</sup> NASA, NTS 3561, 613/308, Assistant NC [LF Goldsworthy], Hammanskraal – NC, Pretoria, 3 February 1930, Kalkbank 112. See also NTS 3412, 4/308, Part 1, SNC, Nylstroom – SNA, 1 July 1921, transactie 939: "The natives own considerable stock but there is practically no sale for it at present just as there is very little demand for their grain. They are further prejudiced in the sale of their cattle by being in a buffer area in which the movement of cattle is restricted on account of East Coast Fever."

<sup>58</sup> NASA, NTS 3444, 59/308, SNC, Hammanskraal – SNA, 7 April 1921, Klipfontein 196: "Reverend JR Madingoane was in to see him today. He and the co-purchasers have £10, 13 head of cattle, 229 bags of mealies, to meet their instalment on the payment which is due."

<sup>59</sup> NASA, NTS 3561, 613/308, Additional NC, Hammanskraal – SNA, 24 June 1939, Kalkbank 112.

<sup>60</sup> NASA, NTS 3619, 1073/308, file 1, Additional NC – SNA, 21 August 1931, Elandsfontein 374. See also NTS 3619, 1073/308, file 1, Additional NC – SNA, 16 May 1932, Elandsfontein 374, where the Additional Native Commissioner reiterates the same point: the Africans will be able to meet their liabilities if they reap enough crops.

<sup>61</sup> NASA, NTS 3609, 981/308, Assistant NC, Hammanskraal – FJ Schikkinger (Lawyer), 3 May 1934, portion E, Buffelsdoorn 185. And, a NAD official noted that Africans in the Hammanskraal area near Pretoria could not pay their tribal levy payments of £5 and their £1 tax "unless crops are good". NTS 3561, 613/308, Additional NC [JC Yeats], Hammanskraal – NC, 19 June 1936, Kalkbank 112.

<sup>62</sup> NASA, NTS 3513, 316/308, SNC, Pretoria – SNA, 14 April 1926, Haakdoornfontein 77. The owners of Rooiboschbaak 1626, during the Depression also had difficulty paying their instalments "on account of drought and low prices for crops". NTS 3552, 555/308, NC, Potgietersrust – McEwen, Fearnhead & Pinkerton, 4 August 1933, Rooiboschbaak 1626. See also NTS 3608, 980/308, Additional NC, Pretoria – De Villiers & Pickard, n.d. [ca. 4 August 1931], portion F, Buffelsdoorn 185 and Acting Additional NC – SNA, 25 November 1934.

<sup>63</sup> NASA, NTS 344. 60/308, Acting Sub-Native Commissioner – SNA, 30 January 1924, Brakkuil 893. "... here we have practically an isolated case of the natives paying up well, and have in fact paid the transfer duties and their share of the costs of survey in terms of the Deed of Sale".

the buyers of portion D of Buffelsdoorn 185 were “evidently well to do and capable of finding the money without difficulty”.<sup>64</sup> Others negotiated a timetable with the seller, written into the Deed of Sale, for a schedule of payments, usually for one to three years, and, occasionally, the buyers could pay off the debt in this way without paying interest.

However, for many purchases, buyers required a mortgage.<sup>65</sup>

After June 1913, mortgages had to be approved by the Governor General. Thus, the state had a role related to the credit system as well as the purchase system, thereby aiding the effort of black Africans to buy land. Between 1913 and 1936, the Governor General approved 1 671 mortgages. Specific data from 287 mortgages were randomly collected. These data emphasize the Transvaal and Natal, exclude the Cape Province and emphasize mortgages on farms rather than lots. Roughly, the survey concerns perhaps 25 percent of mortgages, with greater emphasis on the years between 1920 and 1936. The following conclusions emerged from these data. The overwhelming majority were first mortgages. Only 23 were second mortgages; two were third and one was a fourth mortgage. Interest rates ranged from 3 percent (one example) to 12 percent (one example), but averaged 7,57 percent.<sup>66</sup> Rates declined in the 1930s. Thus, between 1920 and 1929, the rates averaged 8,05 percent, while the average was 6,95 percent between 1930 and 1936.<sup>67</sup>

Institutions were not the main source of mortgages. Out of 286 examples (with one unknown giver of a mortgage) only 49 came from institutions (17 percent); law firms, 3; the Land and Agricultural Bank of South Africa, 9 (1934-1936 only); banks, 11; companies, 26.<sup>68</sup>

Private individuals from the white population were the main source of mortgages for African buyers and landowners. The bulk of these people were men, but women gave 57 mortgages. The records do not provide any information about the men, but certain information is available about the women. Thirty-one were

<sup>64</sup> NASA, NTS 3614, 1025/308, SNC – SNA, 29 December 1924, Buffelsdoorn 185.

<sup>65</sup> Owners occasionally needed to borrow money for other reasons (e.g., to meet the costs of a failed lawsuit) and used their farm as security, but less emphasis will be devoted to these mortgages here.

<sup>66</sup> NASA, NTS 3412, 4/308, Part 1, SNC, Nylstroom – SNA, 1 July 1921, Transactie 939: "Ten per cent seems a very high rate of interest but the objections on the part of investors of money to this class of mortgage have been pointed out by Mr Budler."

<sup>67</sup> Out of 287, the rates for 13 mortgages were unknown and the interest on three mortgages related to "current bank rates".

<sup>68</sup> Four banks loaned money to Africans, with Barclays Bank offering the most (7); the other banks were the National Bank of South Africa (2), the Netherlands Bank of South Africa and the National Building Society. One insurance company, South African Mutual Life, loaned £10 000 in 1922. The African Board of Executors was the dominant business involved in loaning money to Africans (six examples). In all, 18 businesses gave loans, including the two cited above. Only 14 sellers took back mortgages. A very small number of Africans loaned money to other Africans related to land transactions, and there is at least one example of an African taking over a mortgage from two whites. NASA, NTS 3585, 824/308, Sapirstein & Kuyper (Solicitors) – NAD, 16 August 1934, Sjambokzynoudekraal 52.

married and nine were not married (identified as “spinsters”). Of the identified married women, 19 were widows. Twelve of the women were married outside of community of property, which means that they decided, at the time of their marriage, not to merge their assets with those of their husbands and that their children would inherit separately from each of their parents. One infers, therefore, that these women were independently wealthy. Currently, it is not possible to determine if some of the widows had also married outside of community of property, but it is clear that they had extra money available to invest. The main point is that these women, like the men, were investing their money in a reasonably safe investment because the state, through the NAD, watched over indebted Africans (for reasons to be discussed shortly; see pp. 81-82, 91, 94), urged them to meet their obligations and sometimes intervened to help the Africans come up with mortgage payments when legal action was threatened, following a policy at least partially promulgated in 1921.<sup>69</sup>

It is believed that attorneys arranged many of these mortgages, most likely men involved in the negotiations for the sale of a farm.<sup>70</sup> Those who arranged mortgages may have received a commission on the transaction, perhaps 1,5 to 2,5 percent of the mortgage amount.<sup>71</sup> The cost of raising a mortgage was just one of the expenses involved in the process. The mortgagor also faced costs of passing the mortgage bond, including a power of attorney, preparation of the bond and registration fees (mortgage bonds had to be registered with the Registrar of Deeds as official legal documents). Taxes on the transaction also had to be paid.<sup>72</sup>

The Land and Agricultural Bank of South Africa, a semi-independent state institution, did not loan money to Africans. The Land Bank’s Board of Directors made a policy decision on this issue, one not based on the law which created the Land Bank in 1912, the language of which was race neutral. The Board did not budge from this position until the Depression, when the Farm Mortgage Interest Act of 1933 forced a change.

<sup>69</sup> NASA, GNLB 152, 224/14/216, Transvaal General Minute 2, 1921, To all Native Commissioners and Sub-Native Commissioners in the Transvaal, 20 January 1921, labelled "Liabilities of Natives in respect of Land tribally purchased. . . .", in which these men were instructed to keep careful records of payments which are due; it was the "duty" of the official to warn the Africans about the upcoming payment, to determine when it was paid and to inform the Secretary for Native Affairs when the payment was made or if a problem arose.

<sup>70</sup> NASA, NTS 1388, 71/213, Secretary Native Affairs – Sub-Native Commissioner, Rustenburg, 22 June 1928: "Mr Attorney Kotze . . . intimated that he could arrange for the passing of the proposed bond in favour of a client on whose behalf he has money for investment."

<sup>71</sup> NASA, KRB 2/1/15, N2/10/3 (1), Penzhorn, Olivier and Coetsee – Sub-Native Commissioner, Rustenburg, 27 October 1925; URU 1488, 351, Mortgage approval, 29 January 1935.

<sup>72</sup> NASA, NTS 3436, 45/308, SNA – SNC, 15 July 1924, Witlaagte 445.



## 5. PAYING DEBTS

Colin Murray wrote that some African landowners in the Orange Free State became mired in debt, were unable to pay their creditors, especially their mortgages and eventually lost their land between 1913 and 1948.<sup>73</sup> NAD officials tended to reinforce this image. In 1921, for example, prices for grain and cattle were low; thus the owners of Transactie 939 faced reduced earnings for these commodities as they tried to raise the necessary funds to meet their capital payments on their mortgage. A frustrated Sub-Native Commissioner reacted harshly when he wrote that it “almost requires a charge of dynamite” to awaken some of these natives to a sense of the danger which threatens them. “One holds meetings with them and points out the risk they run of losing their farms and some of them show a little sense of responsibility for a day or two, but this [soon] vanishes . . . and they lapse into their previous state of . . . indifference.”<sup>74</sup> More than a decade later, an Additional Native Commissioner reinforced this perception when he reminded the Secretary for Native Affairs that: “Native purchasers . . . are prone . . . when once a substantial amount of the purchase price has been paid off and transfer obtained to relax into a state of passivity from which it is difficult to awaken them.”<sup>75</sup>

The evidence from the Transvaal suggests a different pattern from that described by Murray and also suggests an overgeneralization on the part of the NAD officials cited above. Admittedly, there were times when African mortgagors (borrowers) had difficulty adhering to the schedule for their payments of principal or interest, but in the long run almost all of the borrowers did finally pay off their mortgages. On occasion, many years passed beyond the original due date, and the lender needed to be patient. However, very few foreclosures actually took place in the Transvaal and Africans were rarely ejected from their land because of unpaid debts. Ultimately, mortgage bondholders received their money and Africans retained their land.

For example, Jan Setole, discussed earlier, took out two loans in 1926 for a combined mortgage of £275, at 8 percent interest. Most of the debt was still outstanding in 1934, when the mortgagee called in the loan. Because of the Farm Mortgage Interest Act, Setole was eligible for a new loan from the Land and Agricultural Bank,

<sup>73</sup> Colin Murray, *Black Mountain* (Johannesburg, 2001).

<sup>74</sup> NASA, NTS 3412, 4/308, Part 1, SNC, Nylstroom – SNA, 17 October 1921, Transactie 939.

<sup>75</sup> NASA, NTS 3579, 780/308, Additional NC – SNA, 23 September 1932, Klipfontein 482: “The most important aspect of this proposed transaction is the matter of the purchase price. As is known prospective Native purchasers of land are prone, in their desire to acquire landed property, to accept almost any figure and when once a substantial amount of the purchase price has been paid off and transfer obtained to relax into a state of passivity from which it is difficult to awaken them.”

and he borrowed £250 at 5,5 percent in 1934. The debt was finally paid off in late 1938 or early 1939.<sup>76</sup>

There were various reasons why mortgages may not have been paid off on time. During the 1920s and 1930s, bad weather, especially drought, in the Transvaal affected crops and livestock leading to famished cattle and poor crops, and, consequently, low prices, too low to raise enough money to meet payments. Drought in the Lydenberg area and near Pretoria was identified as a major problem for mortgagors behind on their payments during the years 1925, 1926, and 1927, as well as most of the first half of the 1930s.<sup>77</sup> East Coast Fever, which led to prohibitions against the movement of cattle from one part of the Transvaal to another, also limited the opportunities to raise money to meet payment deadlines.<sup>78</sup> In 1933, certain owners were having problems meeting their full instalment payments, due to "prevailing adverse economic conditions". Africans "have suffered considerable hardship on account of drought and low prices for crops".<sup>79</sup> Also, in the 1930s, problems stemming from the Depression affected the ability to repay mortgages.<sup>80</sup>

Another reason for failure to meet their obligations on time might be that the Africans had paid too high a price for a farm or that they had agreed, unwisely, to pay

<sup>76</sup> NASA, NTS 3513, 316/308, Additional NC, Hammanskraal – NC, 16 January 1939, Haakdoornfontein 77. The balance equalled £157.5.0, which was paid in full to the Land Bank. Note that the NAD had threatened Setole with foreclosure the previous year: NTS 3513, 316/308, NAD official – CNC, 1938 (day and month not mentioned). The official told the Chief Native Commissioner to ask the Native Commissioner to encourage Setole to reduce his debt. The official warned that if Setole failed to make payments, foreclosure and sale would occur. "The position is far from satisfactory and Sitole (*sic*) should be informed that continued failure on his part to make payments as they fall due will ultimately result in foreclosure on the bond and the sale of the property." See also NTS 3513, 316/308, Additional NC, Hammanskraal – NC, 12 July 1938. Setole requested time until the end of the month.

<sup>77</sup> Crop failures: NASA, NTS 3561, 613/308, Additional NC [JC Yeats], Hammanskraal – NC, 19 June 1936, Kalkbank 112; NTS 3561, 613/308, Acting Additional NC [DC de Lange], Hammanskraal – NC, 13 May 1938, Kalkbank 112; Drought: NTS 3450, 82/308, Detached Clerk, Rayton – Sub-Native Commissioner, 17 November 1926, Kuilsrivier 12, portion C; NTS 3492, 237/308, Detached Clerk, Hammanskraal – SNC, 7 December 1926; NTS 3548, 525/308, DR Hunt, Sub-Native Commissioner, Sekukuniland – Magistrate, Lydenburg, 25 July 1927, Diamant 306; NTS 3558, 591/308, Additional Native Commissioner – SNA, 22 October 1931, Rooikoppen 477, "Kaalkop"; NTS 3552, 555/308, NC, Potgietersrust – McEwen, Fearnhead & Pinkerton, 4 August 1933, Rooiboschbaak 1626.

<sup>78</sup> East Coast fever: NASA, NTS 3412, 4/308, Part 1, SNC, Nylstroom – SNA, 1 July 1921, Transactie 939. "The natives own considerable stock but there is practically no sale for it at present just as there is very little demand for their grain. They are further prejudiced in the sale of their cattle by being in a buffer area in which the movement of cattle is restricted on account of East Coast Fever"; NTS 3412, 4/308, Part 1, SNC, Nylstroom – SNA, 1 February 1922, Transactie 939. Africans are having a hard time because of problems related to East Coast fever and being unable to sell cattle, "over and above the great slump generally in cattle and produce".

<sup>79</sup> NASA, NTS 3552, 555/308, NC, Potgietersrust – McEwen, Fearnhead & Pinkerton, 4 August 1933.

<sup>80</sup> NASA, NTS 3561, 613/308, Additional NC, Hammanskraal – SNA, 24 October 1934, Kalkbank 112. "Under the economic stress of the last few years, the natives find it difficult to find £5 as well as other State Taxes. There is no price for produce or such stock as they rear. Work is also scarce and under the circumstances can hold out no hope of any immediate improvement" [copied as written]. See also: NTS 3556, 577/308, Assistant NC, Hammanskraal – NC, 17 April 1931, Serybult 300.

off their debts in too short a time.<sup>81</sup> One NAD official even suggested that a quarrel between the chief and the leader of 36 co-owners made it difficult to raise money to meet their payments.<sup>82</sup>

Delay in repaying a mortgage increased the chance that some of the co-owners might grow old and unable to pay; also, on occasion, too many poor widows emerged as the co-owners after the deaths of their husbands.<sup>83</sup> Another cause of the failure to pay off mortgages on time was the migration of co-owners to the cities. These individuals were sometimes difficult to find in order to respond to requests for contributions or to make obligatory payments. Some of these urban dwellers lost interest in helping the users of the land to make the mortgage payments. There is evidence which shows that co-owners had difficulty promoting a sense of responsibility among these city workers to continue their contributions to pay off the mortgage on a rural piece of property where they no longer lived.

One means of trying to raise money to meet these responsibilities was an official tribal levy which could be imposed on the members of a community under Section 15(1) of the Native Taxation and Development Act, Act 41 of 1925. For example, the Governor General proclaimed a tribal levy of £2.0.0 per person for three years, 1930, 1931, and 1932 for the Ndebele under-chief Witbooi Mahlangu.<sup>84</sup> Also in 1930, a similar proclamation imposed an annual levy of £5.0.0 on the owners of a portion of Kalkbank 112.<sup>85</sup> Most interesting, 200 buyers of Uitvalgrond 376 agreed to a voluntary annual payment of £6.5.0 until their debt was paid.<sup>86</sup> And, more than half of the owners of Transactie 939 passed a resolution to ask the Governor General to impose a large levy of £7.10.0., but the Secretary for Native Affairs decided against

<sup>81</sup> NASA, NTS 3619, 1073/308, file 1, CNC – SNA, 8 October 1937, Elandsfontein 374: "The Native Commissioner, Pretoria, reports that the co-purchasers . . . are hardworking, respectable persons . . . it is solely due to the fact that their initial indebtedness was too great for them to redeem over the short period allowed, that they are now compelled to seek assistance." See also: NTS 3561, 613/308, Additional NC, Hammanskraal – SNA, 24 October 1934, Kalkbank 112: "The sum paid was far in excess of the economic value of the ground and attribute the failure to meet obligation mainly due to this fact. . . ." [copied as written]; and NTS 3579, 780/308, Additional NC – SNA, 23 September 1932, Klipfontein 482: "The most important aspect of this proposed transaction is the matter of the purchase price. As is known prospective Native purchasers of land are prone, in their desire to acquire landed property, to accept almost any figure . . . ."

<sup>82</sup> NASA, NTS 3444, 59/308, SNC, Hammanskraal – SNA, 7 April 1921, Klipfontein 196. Reverend JR Madingoane and the co-purchasers on 7 April had only £10, 13 head of cattle, and 229 bags of mealies, for their instalment payment. The SNC did not believe that they could raise more at that time: "You are no doubt aware that a considerable amount of personal enmity exists between Madingoane and the Chief Robert Moepi, who professes to have nothing to do with the buying of the farm, and from the records in my office it would appear that Madingoane and 35 others are the sole purchasers. In all probability Madingoane's difficulty in raising the necessary funds is the result of his quarrel with the chief."

<sup>83</sup> NASA, NTS 3426, 26/308, Assistant NC, Hammanskraal – SNA, 8 November 1928, Elandsfontein 204.

<sup>84</sup> NASA, NTS 3436, 45/308, Proclamation 94 by the Governor General, 30 April 1930, Witlaagte 445.

<sup>85</sup> NASA, NTS 3561, 613/308, Official Proclamation imposing a Tribal Levy, 26 May 1930 (printed), Kalkbank 112.

<sup>86</sup> NASA, NTS 3477, 175/308, Acting SNC – SNA, 5 September 1927, Uitvalgrond 376.

approving this request on technical grounds relating to the language of the law.<sup>87</sup> However, it was one thing to achieve agreement that a tribal levy was wise, and another to collect it from each male member of the group each year. In addition, there seems to have been limits on the power of the state to help the members of a group enforce the levy, at least until 1931.<sup>88</sup>

In 1928, a NAD field officer referred to the attitude of certain debtors towards the risk of foreclosure: they “refuse to believe that the ground will be sold”.<sup>89</sup> This attitude among African landowners was reinforced by the evidence from the time: very few Africans lost their land because of their inability to pay off their mortgages on time. Oftentimes, NAD officials intervened to prevent land loss, actively engaging in negotiations to persuade the bondholder to be patient and not to call in the mortgage, negotiations which usually led to an extension of the time for repayment. When the bondholder was adamant, officials looked for another person willing to invest money in a new mortgage for the owners. NAD officials sometimes pursued lengthy negotiations and other efforts because they strongly opposed African-owned land returning to white ownership; equally important, officials were particularly concerned about the consequences of a foreclosure when the likelihood was that the former African owners would be forced to move. The dominant question was always, “where were they to go?” There were very few reasonable options for evicted Africans and their families, especially because a large number of people could be involved: firstly, the reserves were overcrowded, as already discussed (see p. 79); secondly, state officials were opposed to the migration of women and children to the cities; thirdly, even though white farmers regularly complained about inadequate numbers of farm workers, white farms were not perceived as a place of refuge because the Natives Land Act included provisions against squatting and sharecropping, and the state supported limits on the number of families living on a farm; also, many Africans opposed living on white farms if they were required to be labour tenants. Consequently, state officials pursued the course described above, or in extreme cases, the state bought the land.

For example, the Lands Department purchased portion F of Buffelsdoorn 185 in 1933. A rare example of foreclosure occurred in 1929 when the bondholder

<sup>87</sup> NASA, NTS 3412, 4/308, Part 1, SNA – Additional NC, 8 August 1930, Transactie 939: "(T)he Department, after careful consideration, is of the opinion that the co-owners of the farm cannot be regarded as a community within the meaning of Section 15(1) of the Native Taxation and Development Act 41 of 1925, and [the Department] considers that the imposition of such a levy as is contemplated would be entirely foreign to the intention of the Act."

<sup>88</sup> NASA, NTS 3412, 4/308, Part 1, SNA – Reverend DG Pulumu, 5 September 1931, Transactie 939. The SNA regretted "that this Department has no power to sue or compel such of the co-purchasers as have in the past failed to pay their share towards the general liability to meet their obligations".

<sup>89</sup> NASA, NTS 3426, 26/308, Assistant NC, Hammanskraal – SNA, 8 November 1928, Elandsfontein 204: "The Natives say that they are unable to get more money because many of the buyers have got nothing while others refuse to believe that the ground will be sold."

forced the Bakwena owners of Elandsfontein 204 into foreclosure because they had defaulted on their mortgage payments. The farm was sold at auction in March, 1929, and the state purchased the property because they believed that Europeans should not buy the land.<sup>90</sup>

Another example illustrates part of this picture: In 1912, 36 Africans purchased Klipfontein 196, and borrowed £3 303.17.6. By 1923, eleven years later, their balance had been reduced by two-thirds, to £1 038; but, the owners needed another five years before they finally paid the last instalment in October 1928. What is interesting about this example, in addition to the 16 years it took to complete the retirement of this debt, is the attention paid to the status of the mortgage by the Secretary for Native Affairs. Between 1920 and 1928, no less than 33 letters were sent to the head office in Pretoria in response to inquiries by the Secretary for Native Affairs or other high officials about the progress of the Klipfontein owners in paying off their mortgage.<sup>91</sup>

The most important conclusion to this discussion about debt is that Africans repaid an overwhelming majority of their mortgages. I collated a sample list of mortgages which shows at least 48 mortgages fully paid and only one failure leading to foreclosure.<sup>92</sup> Certain African buyers paid off the instalments to the seller or the mortgagee early.<sup>93</sup> And many other buyers fulfilled their agreements on time. For example, the 200 buyers of Uitvalgrond 376 followed their agreement with the seller to the letter. The farm sold for £5 000; the buyers and seller agreed to the following schedule: £2 500 down payment, £1 250, to be paid one year later (done on 23 August 1928), and the final £1 250 to be paid the following year, which the owners did on 16 September 1929. Part of the reason that they were successful is because of the agreement referred to earlier: the Uitvalgrond partners taxed themselves £6.5.0 per

<sup>90</sup> See NASA, NTS 3426, 26/308. Also, the South African Native Trust bought Transactie 939 in 1937 to prevent foreclosure. NTS 3412, 4/308, Part 1, Resolution, 8 September 1937. These are the same people, discussed earlier, about whom NAD officials complained in 1920 and 1928. See p. 85.

<sup>91</sup> See NASA, NTS 3444, 59/308. This suggests about 60 letters concerning this one debt during those eight years; see also NTS 3456, 107/308, Rhenosterkop 1048, where one finds (between 30 June 1928 and 13 January 1931) at least 21 letters between the SNA and field officers about the debt and payments. The mortgage was paid and bond cancelled in January 1931.

<sup>92</sup> See the following for evidence about mortgages which were paid off: NASA, NTS 3552, 555/308, NC – SNA, 23 January 1934; NTS 3456, 107/308, Rhenosterkop 1048, letter, 13 January 1931; NTS 3549, 538/308, CNC – SNA, 28 September 1936, portions A and D, Witlaagte 445; NTS 3533, 431/308, CNC – SNA, 10 November 1936, Wildebeestkuil 8; NTS 3609, 981/308, CNC – SNA, 4 May 1939, 21 June 1939, Buffelsdoorn 185 (Masika portion); NTS 3499, 278/308, NC, Pretoria – SNA, 20 January 1942, Elandsfontein 374; NTS 3562, 614/308, Additional NC, Hammanskraal – Taylor and Geerling, 14 June 1945; Additional NC, Hammanskraal – SNA, 13 August 1945, portion B, Kalkbank 112. Please note that data on the number of paid off mortgages is difficult to find because the Deeds Office staff destroyed the documents after all the payments had been made.

<sup>93</sup> NASA, NTS 3498, 273/308, SNC, Hammanskraal – SNA, 2 October 1917, Syferpan 612.

year “until the debt [was] paid off”.<sup>94</sup> But whether the payment was early, on time, or late, practically all Transvaal mortgages were paid off, showing a major contrast between Colin Murray’s description of the Orange Free State and the evidence from the Transvaal.<sup>95</sup>

## 6. CONCLUSION

John Dube, cited at the beginning of this paper, was correct. Ownership of land continued to be very important to African identity, and a small portion of the African population in the Transvaal and Natal accumulated the resources to restore to themselves a part of their African heritage. Africans bought land to achieve several aims: seeking independence from white control of their labour and security from being evicted from white owned farms on which they may have lived for generations. They also sought to restore to their ownership land which had once been theirs but was lost in the 19<sup>th</sup> century to white conquest and, thereby, to honour their ancestors. These latter two goals were very important to their African way of life. All these goals were in addition to preserving or improving their economic possibilities and reaping the profits of their agricultural efforts. Buyers achieved their goals through following the European system of purchase, transfer and ownership rights guaranteed by law, rather than custom.

After Parliament had passed the Natives Land Act, African buyers took the initiative to achieve a goal, helping to shape their own destiny. They negotiated with the seller, applied for the required approval (both for a purchase and to acquire a mortgage) and raised the money to pay for the land and the principle and interest on their mortgages. African efforts began the land buying process and enabled it to proceed. Generally, they followed the rules created by the state. But, they could not do everything on their own, which was a constraint on their freedom. Others, native commissioners and the Secretary for Native Affairs and his immediate subordinates, had to participate in the process. In short, the NAD bureaucrats helped to shape the context for success, enabling the purchases and the mortgages and also playing a role to safeguard the buyers. In 1913, most politicians and state officials anticipated that Parliament would adopt the recommendations of the Natives Land Commission and Africans would no longer be able to buy land. Until then, state officials were not unwilling, with “the special permission of the Governor-General”, to allow a small

<sup>94</sup> See NASA, NTS 3477, 175/308, Acting SNC – SNA, 5 September 1927, Uitvalgrond 376; Deed of Sale: 19 August 1927. This deed included the payment schedule: no interest was charged as long as the instalments were paid on time (otherwise an 8 percent rate would have been imposed). Also see NTS 3477, 175/308, Additional NC, Pretoria – SNA, 16 September 1929. The final instalment was paid on this day.

<sup>95</sup> An analysis about why the Native Affairs Department treated debt and foreclosure differently in the Orange Free State and the Transvaal is beyond the purview of this article.

number of exceptions to the general prohibition against buying.<sup>96</sup> But, Parliament failed to pass a new land law after the Commission had recommended adding eight and one half million morgen for Africans in the scheduled areas. Thus, the exception clause continued to be operative for those Africans with the initiative and the resources to buy a piece of land in rural Transvaal (and Natal). Officials, from the Prime Minister on down, continued to believe that Africans required more land and concluded that the state would have to act administratively to satisfy their land hunger. Thus, the state made buying on a larger scale possible again in 1918 and Africans took advantage of the opportunity.

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<sup>96</sup> LDE 726, 12473, Volume 3, E Dower, "Natives Land Act," 12 November 1913.