



Cleaning up cloudy title in a developing country

by Clarissa Fourie

***Department of Surveying and Mapping
University of Natal (Durban), South Africa***

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ABSTRACT

Property rights in the new South Africa are different from what they were under apartheid. New laws and land invasions have introduced uncertainty to some property owners; hope to some of the land hungry historically disadvantaged; and cloudy, uncertain, ambiguous title deeds on some land parcels which had been previously surveyed and registered to the highest technical standards. We need to take a fresh look at our existing technical processes, in order to adapt them, so that cloudy titles can be cleaned up. Property needs to be re-created in parts of South Africa.

A conceptual framework is set up, drawing on McLaughlin's path to property and Munzer's approach to the concept of 'ownership,' to make it possible to critically examine the technical processes and to suggest adaptations. The adaptations suggested bring together conventional technical processes and the rights enquiry approach being floated by the Department of Land Affairs. What is suggested for property owners with cloudy titles is that they engage a land professional to have a full land audit of rights and claims done for their property. This should then be followed by a negotiated legally binding settlement between all stakeholders and the registration (and re-survey if necessary) of the new land rights and land use agreements.

Each cloudy parcel cleaned up would benefit the owner and the other claimants to the land parcel and remove the latter from the larger equation of land hungry people in the country. Hopefully, this would be accumulative, so that the land reform program of the Department of Land Affairs on the one hand, and of private land owners re-creating property rights on the other, would lead to a situation where both the historically disadvantaged and advantaged would eventually have security of tenure.

INTRODUCTION

The concept of ownership and property rights in the new South Africa is different from what it was under apartheid. New laws and land invasions have introduced:

- uncertainty to some property owners;
- hope to some of the land hungry historically disadvantaged and;
- cloudy, uncertain, ambiguous title deeds on some land parcels which had been previously surveyed and registered to the highest technical standards;

I am arguing that we need to take a fresh look at our existing technical processes, in order to adapt them so that cloudy titles can be cleaned up. To do this an attempt is made, as Kelly puts it, to set up an intellectual framework which will make it possible to ask the right questions (1995:511). The questions relate to whether or not our present technical processes are delivering certain and secure property rights for the nation.

To set up the intellectual or theoretical framework, McLaughlin and de Sotho's work is used, in respect to their path to property approach and the link between the wider legal environment and the technical processes (1994). Paths to property, or technical processes, from Mozambique (first registration) and South Africa (subdivision), are then used to illustrate typical technical processes, and how their major function is to bring all stake holders to agreement about land rights and land use.

More importantly, based on McLaughlin and de Sotho (1994), attention is focused on the symbolic nature of these technical processes as representations of the wider legal environment. That is, the technical process is a conceptual construct and not just an isolated action which only responds to technical logic.

McLaughlin and de Sotho's approach is then linked to the work of Munzer (1990), whose thinking is based in law and philosophy. Munzer argues that the concept of 'ownership' is not finite but can change over time with history; and that it should change to achieve maximum public use. Based on this, I argue that the technical processes, as symbolic constructs, which are associated with land registration and surveying, need to be adapted to reflect the changes to the constellation of what is termed 'ownership' in post apartheid South Africa. This constellation of 'ownership' has been transformed to facilitate greater public or group use of some private individual's property.

This change to the concept of 'ownership', together with land invasions, because of the skewed land distribution in the country, has led to cloudy title deeds on certain property. These parcels need to go through another technical process so that certain unambiguous property rights can be re-created. The technical process should include additional steps such as:

- a full land audit of both rights and claims on the property;

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- a negotiated legally binding settlement between all stakeholders: and
- the registration (and re-survey if necessary) of the new land rights and land use agreements.

Finally, having unpacked some of the complexity, cost and time consuming nature of these technical processes, I raise the question as to whether, and how, they can be used for low income land and users across the whole income spectrum.

THEORETICAL FRAMEWORK

The Path to Property

McLaughlin and de Sotho (1994:308, 310) in a seminal discussion on the formalization of property, argue that there is a path to property. Property rights must be formalized through being "...embodied in universally obtainable, standardized instruments of exchange that are registered in a central system governed by legal rules." (1994:308). These instruments then serve as certain and unambiguous proof of ownership. As far as land is concerned, this certainty and unambiguous ownership is supplied through surveying and land registration.

It is possible to gain some insight into what it means to move from raw land to property rights (and new forms of property rights) by examining the paths to formalized property which are usually associated with surveying and registration; and by unpacking some of the technical processes which are linked to these paths, such as for example, what is known as 'first registration' and 'subdivision.'

An example of such a path, or technical process, from Mozambique indicates the type of steps one would have to go through in order to register agricultural land for the first time. It would involve:

- checking to see whether the applicant was a citizen of the country;
- assessing the applicant's investment plan;
- checking to see whether any registered rights existed in the area already, which would entail examining the registry records, possibly at 2 or even 3 levels of government depending on the parcel size being requested;
- obtaining a land use decision, either from a coordinating body, or from a range of departments allocating land use, such as forestry, coastal zone management, agriculture etc;
- checking to see if the land was already occupied by customary right holders;
- adjudicating these rights and that of the investor/applicant (a new step which is being put in place (Nichols, S., Fourie, C. and M. Mejias (1996));
- surveying and monumenting the land;
- waiting for a specified period to see whether the investor completed his/her investment plan;
- verifying the applicant's rights on the ground before creating the final title and then sending the title and file to the registry office. This involves transferring the file from the Ministry of Agriculture to the Ministry of Justice and;
- the registry office in the Ministry of Justice recording the rights into the various registers.

(Mozambique Government:1997).

This example clearly indicates that a number of government departments are involved in this technical process and have to give their agreement to the land being allocated to a particular individual for a particular set of purposes. Obtaining land use planning and land use allocation, or land development agreements from a range of departments is extremely crucial in this process.

Third party rights also have to be protected through an examination of the existing registered rights and by making it possible for customary right holders to sign off in one form or another. That the process takes place over time and is not an instant and simple transaction is also clear.

An example of a path, or technical process, related to subdivision in South Africa indicates the type of steps one would have to go through in order to subdivide agricultural land in order to convert it to urban use (Fourie:1994). It would involve:

- Making an application to the Minister of Agriculture in terms of Act 70 of 1970;
- If the consent was granted, making an application to the Administrator of the province for consent to change the land use;
- If the consent was granted, making an application to the relevant local authority which has the delegated authority for the area;
- The local authority assessing the area in terms of its ability to supply electricity, water reticulation, drainage, sewerage, roads and planning;
- If the consent was granted, the surveying of the subdivision;
- The Surveyor General approving the diagrams of the surveyed properties;
- The attorney (conveyancer) preparing the juridical side of the newly created properties, ensuring that third party rights are not infringed;
- The properties being registered at the Deeds Registry;

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- The records of the Deeds Registry being updated and;
- The applicant receiving the new title deeds.

In principle the South African and Mozambique technical processes are similar in that:

- third party rights are protected by an examination of the registry records;
- all the parties who have interests in relation to planning and land use should sign off before the parcel can be registered and;
- a range of stake-holders, both individual and government, have to be consulted and have to agree to the bundle of rights being altered;

One major difference between the two countries is that, firstly there is no automatic step in the South African administrative processes to ascertain whether customary (or informal) rights or claims exist in the parcel. Secondly, there is no step which requires the involvement of these customary right holders or informal claimants in the technical process.

That is, the Surveyor General (and Deeds Registrar) does not require an 'approval,' or 'consent,' as they are known, from the resident community, or proof on the other hand that there is no resident community, when a subdivision or consolidation is processed.

Each step in the property formalization process, as indicated in the examples given, takes time and resources, including finances and skilled personnel, and adds value to the land. This value is added because uncertainty and ambiguity about the status of the land is being removed over time making it more marketable (McLaughlin and de Sotho:1994:308). Simultaneously, the exact nature of the rights on the parcel of land are becoming clearer over time, because of the agreements being reached with the range of parties involved with the parcel of land. This also makes it more marketable. This technical process by which agreement is reached presupposes that once it has been reached that all parties will generally abide by the agreements.

I will argue that these technical process which create property and value need to be re-evaluated in times of historical change, to ensure that they are still supplying certainty and security to the users or clients.

History can change the concept of 'ownership'.

McLaughlin and de Sotho also argue that the registration process, whereby property rights are created over raw land, is essentially "...a conceptual construct." That is, the surveying of the land and juridical work which accompanies it is not "...significant in itself.. (but) ..represents some previous legal agreement about ownership" (1994:310). In other words, as I understand McLaughlin and de Sotho, the technical processes of themselves do not create property rights, but instead are symbols put in place by the wider legal and political environment to create certainty and security of tenure in the country.

Often professionals who are servicing the cadastre have become too narrowly focused on the technical processes which give security of tenure, to the point where it is thought that these processes stand alone and are outside of the wider legal and political environment. It is often thought that, if the surveying and land registration system is serviced by professionals working to very high standards of accuracy, undertaking all the necessary technical steps to remove uncertainty, this is sufficient to supply users with certain, unambiguous, secure and marketable title deeds, whatever the legal and political environment of the country.

These technical processes are probably sufficient in many societies, although events in Australia with aboriginal land claims (National Native Title Tribunal:1997) are indicating that they too might need to rethink these issues. However, in a country such as South Africa, which is undergoing fundamental change, we cannot take for granted that the previous government's technical processes, which I have argued are actually conceptual constructs, automatically represent the present government's approach to what is a "...legal agreement about ..(what is land).. ownership." (McLaughlin and de Sotho:1994:310).

That is, because the technical processes are merely symbols of the wider legal and political environment, we need to re-examine our technical processes in the light of our new environment. We need to ask whether the processes supply the same type of certainty and security as they did previously to property owners and clients; and whether they supply sufficient certainty and security for all the new property right owners and clients in the country.

I will argue that they do not do so automatically, and that the technical processes need to be adapted to our new political and legal environment, so that certainty will be increased in our present system. To do this I will make reference to Munzer's work on property rights (1990), in order to create a conceptual framework within which it will be possible to analyze the South African situation.

'Ownership' is not a finite concept

Munzer (1990), based on work by Honore (1961), argues that, in terms of the majority of Western legal systems, and I am assuming that South Africa presently falls into this category, there are standard characteristics, or "...incidents.." as he terms them, of what is 'ownership'. He states that,

"(t)hese incidents ..(consist of).. the claim-rights to possess, use, manage, and receive income; the powers to transfer, waive, exclude, and abandon; the liberties to consume or destroy; immunity from expropriation; the duty not to use harmfully; and liability for execution to satisfy a court judgement. If a person has all of these incidents, or most of them, with respect to a certain thing, then he or she owns it." (Munzer:1990:22).

However, he goes on to point out that even if one creates a list of these incidents, that "...the idea of property is indeterminate at the margin." (*op.cit.*:24). The reason for this is firstly, that it is not possible to define the exact constellation of characteristics or "...incidents.." that go towards making up what is 'ownership.' "No litmus test can separate rights of property from.. those of contract in all cases. Nor do lawyers language and reasoning.. require such a line. It suffices to be able to describe a person's legal position." (*op.cit.*:22-24). That is, the concept of 'ownership' is itself ambiguous and cannot be described definitively and is open to a case by case interpretation.

Secondly, absolute ownership does not exist, as ownership is limited by legal instruments such as mortgages, servitudes and zoning restrictions. Zoning restrictions, or land use controls, are a very common example of public rights held over private property. The examples given above of the technical processes associated with subdivision and first registration within South Africa and Mozambique, illustrate the nature of public rights over private property and the manner in which they are implemented. That is, generally it is not possible for a person to register or subdivide their land unless, and until, they have obtained the relevant land use consents.

Building on Munzer's approach (1990) I am arguing that 'ownership' is a concept which:

- is open to ongoing legal and political re-interpretation within any country and can change over time, even if there is no fundamental change in that country;
- will change in a country which has undergone fundamental change, such as South Africa;
- is transformed by history through the transformation of the constellation of characteristics which make up any particular country's concept of 'ownership';
- is never absolute but is always limited by public rights and how those public rights are interpreted.

That is, given that the wider political and legal environment has changed in South Africa, we need to re-examine the country's constellation of characteristics which make up 'ownership' today. This constellation is the context within which the technical processes are carried out in order to supply certainty and security of tenure. Any change in the constellation might mean that new steps are required in the technical processes undertaken by professionals, in order to ensure the level of certainty and security expected by their clients, both old and new, historically advantaged and disadvantaged.

Alteration in South Africa's 'ownership' constellation

Munzer continues his analysis by arguing that justice and equality is often tied to property rights. He argues that unequal property rights within one country are only justifiable if "(1) everyone has a minimum of property and (2) the inequalities do not undermine a fully human life in society" (*op.cit.*:227). He goes further to state that if unequal property rights exist within a country that the individual property rights of some should be sacrificed in order "to promote overall utility.." (*op.cit.*:228 -9).

In simple terms this would mean that land should be redistributed from those who have land to those who do not have land. However, there is also another way of interpreting his suggested framework. Although Munzer does not go so far as to suggest that property rights should become less individualized so that they could be utilized for the good of the wider society, by the alteration and re-interpretation of the 'ownership' constellation of the country, it is a logical deduction which can be made from his writings.

Although most land in South Africa is being redistributed through a physical change in ownership, many individual property owner's rights, especially in the rural areas, have been altered over the last 3 years, because the concept of 'ownership' has been re-interpreted "to promote overall utility" (*ibid.*). That is, the introduction of acts such as the Interim Protection of Informal Land Rights Act 31 of 1996, the Land Reform (Labour Tenants) Act 3 of 1996 and the Extension of Tenure Security Act of 1997, has altered the individualised nature of the bundle of rights in South Africa's freehold to introduce, under certain conditions, less individualised property rights.

An example of this is a large mining house in South Africa, who shall remain unnamed, which owns in freehold vast tracts of land, which they had leased out for generations to farmers. Resident on these farms were labourers, many of whom had ancestral claims to the land (van Vuuren:1992). The farmers had reached contractual agreements, of one sort or another, with these same residents, in that they supplied the labour for these farms.

The mining house is now finding that, because of the contractual agreements between the farmers and the farm labourers, and because of the ancestral rights of these labourers, that under the new legal and political environment in the country, these labourers have some form of right over the mining house's land. That is, what had previously been individualised freehold owned by the mining house, has now become a less individualised freehold shared by the mining house with the existing farm labourers (personnel communication -mining house representative:1997).

This post apartheid 'ownership,' in these specific parcels of land for example, but not across the whole country, is less certain, secure and tradable as far as the freehold owner is concerned, than it was previously (Rawlins:1997:54-76). Yet the rights of the labourers and residents on these farms is more certain than they have been for generations (South African Government:1997:x,3; van Vuuren:1992).

The freehold owner's rights are less certain not because his/her rights are less individualised because the constellation of 'ownership' characteristics has changed to "to promote overall utility.." (Munzer:1990:228). They are less certain mainly because the rights of the labourers and residents on these farms, although protected by law, have not yet been mediated and/or adjudicated and settled relative to the registered owner's rights, in terms of the individual parcels involved. Until and unless this is done, the rights in the parcel will be ambiguous and insecure for both the registered owner and the farm workers.

Heterogeneous and homogenous

In McLaughlin and de Sotho's terms, the mining house's freehold has moved from being a "homogenous item..", which is freely tradeable, to a "heterogeneous item..". Heterogeneous items are where,

"..trade of.. land ..require(s) substantial effort to measure its attributes: Does the seller .. have the right to transfer?.. Will the new owner be accepted as such by those who enforce property rights? What are the effective means to exclude other claimants? If measurement is difficult, then there will be no exchange at all or exchange will be restricted to closed circles of trading partners who trust one another." (1994:308).

The freehold properties of the mining house were "homogeneous items.." at some point as they were surveyed and registered to the highest technical standards following the technical processes outlined above. However, because of the fundamental change in the country's

constellation of 'ownership', these freehold properties have become "..heterogeneous items.." (*ibid.*) and no longer have the same certainty and security of tenure. Also, these properties have probably declined in value (Rawlins:1997:54-76), as heterogeneous items have less value as they are not as easily traded.

These mining house properties, and others like them, need to have property re-created on these parcels. The same parcel of land has moved over time from being:

- raw land;
- to registered certain secure formalized property (but only for the mining house) after the completion of the necessary technical processes. At this point security of tenure would have dramatically decreased for any other long standing residents on the land;
- to a "..heterogeneous item.." (McLaughlin and de Sotho:1994:308) which is ambiguous, less certain and secure and less tradeable (for the property owner but not the farm workers);

This same parcel should now go through a similar process as the initial surveying and registration, but with adapted steps in the technical process, in order to re-create certain and secure property rights for all interested parties in the land parcel. The same argument holds for parcels affected by land invasions.

Land invasions

Another reason why many well surveyed and registered freehold properties in South Africa are heterogeneous and no longer have the same security of tenure and tradable value, is because of land invasions. These land invasions could be on the property itself or on adjacent properties.

Land invasions are underpinned by a number of factors such as:

- Blacks only had land rights in about 13 percent of the country up until 1991, although they consisted of more than 75 percent of the population (Wilson, Kaplan, Makit, and Walton:1952; Fourie:1993);
- most of these land rights were in rural areas leading to skewed urbanisation patterns (Wilson:1985; Fourie:1993);
- in traditionally White owned farm areas there were no areas set aside under apartheid for Black land rights (Surplus People's Project:1983);
- there are high expectations about land redistribution from White owned commercial farms to Black owned small holdings and;
- the rate of formal land redistribution has not been able to keep pace with demand (South African Government:1997);

This has meant that often rural land owned by White commercial farmers has been invaded by Blacks (South African Government:1997; Rawlins:1997:87-88). Land invasions have not been supported by the government, but given the above circumstances, the government has tried to solve the problems as they arise by supplying resources and other options. The government considers eviction to be the "..measure of last resort.. (and).. only.. after due process has been followed" (South African Government:1997:47).

My argument, for the need to re-create property by undertaking adapted technical processes not unlike first registration, applies here as well. Such land invasions also create heterogeneity on previously secure, tradeable property. That is, freehold which has been invaded raises the same questions in the minds of potential buyers as land parcels affected by formally altered 'ownership' constellations.

Based on this, I am arguing that the constellation of characteristics associated with 'ownership' in a country is altered both by formal factors associated with a particular legal and political environment and with the informal or *de facto* factors associated with it. That is, both the formally altered constellation of 'ownership' and land invasions are the result of the need to redistribute land more equitably on the one hand, but on the other hand they both have a similar impact on the property rights of some individuals. Land professionals who wish to supply security of tenure and certainty to their clients need to assess both formal and informal factors and add new steps into their usual technical processes in order to ensure that the product they are delivering meets their clients expectations in relation to security of tenure.

Adapted technical processes to turn cloudy title back to clear title

Some freehold properties now have cloudy title and property needs to be re-created on these parcels by using adapted technical processes. As indicated above, the technical processes such as first registration and subdivision actually consist of a range of agreements between a number of stake-holders, including government departments, third party right holders and the potential owner of the property, about how land rights will be held and how the land will be used.

In order to go forward on property with cloudy title, a useful step might be to re-examine the agreements reached when the land was initially registered, subdivided or consolidated, and assess whether these agreements are still valid today in terms of the *de facto* situation on the land parcel.

For example, the registered boundaries and conditions of title of a farm might show that there is one owner of a very large farm and that the land use is large scale commercial farming. Yet in reality a significant part of the farm is settled by small holders with cattle who are also subsistence farming, while supplying labour to the farmer, who in turn is leasing the farm from an absentee owner. Although this situation could go on indefinitely, it might well be in the interests of the absentee owner to have property re-created on this parcel. It is certainly in the interests of the labour.

To re-create property would require some kind of adjudication or "..rights enquiry process." (Department of Land Affairs:1997). The rights enquiry process approach has become a tool of the Department of Land Affairs and is an attempt to "..bring the law in line with reality.. (in that).. it seeks to discover.. what *de facto* land rights exist in practice .. and give these legal recognition." (Department of Land Affairs:1997).

The Department of Land Affairs' approach focuses on the improvement of the rights of the large numbers of people who were historically disadvantaged. Partly because of a constraint on resources and partly because of doubts about the efficacy of titling individuals (*ibid.*), the department has been more concerned with the creation of inclusive agreements often on state land, rather than the sorting out of cloudy title on private land.

Aspects of the Department of Land Affairs' rights enquiry procedure, when linked to the more conventional approaches associated with adjudication, could well assist land owners in sorting out their own cloudy titles. At the same time they would be benefitting the Department of Land Affairs in getting the land reform job completed.

Conventionally in the land registration world adjudication is defined as the process whereby existing rights in a particular parcel of land are finally and authoritatively ascertained (Habitat:1990:25). Re-creating property in South Africa, by learning lessons from the Department of Land Affairs rights enquiry process, would mean that new adjudication techniques would have to be evolved.

Re-creating property would entail an assessment of:

- the registered real rights in the parcel -this would include freehold, long term leasehold and servitudes;
- other rights such as those of labour tenants, farm workers, and any other contractual rights that might exist including rental agreements;
- restitution claims;
- informal settlement residents claiming land;
- the rights and/or claims of groups and not just individuals;
- land use agreements, in terms of conditions of title, leases, verbal agreements between the farmer and farm workers;
- informal land use practices;
- any plans for the area which would affect the medium to long term legal status of the area, such as mineral rights, mining title, mining right servitudes, Escom, SATS or other servitudes, planned national roads and/or dams, unregistered surveys and/or layout plans;
- the major parties or stake-holders with an interest in the land.

Such an assessment should not only include an enquiry into who has rights or claims, but also the boundaries of these rights or claims. Based on this information, the land professional would need to be able to negotiate the land rights and land uses with all the stake-holders to the point where they could reach an agreement which would be legally binding.

That is, adjudication to re-create property is not just about "...the process whereby existing rights in a particular parcel of land are finally and authoritatively ascertained." (Habitat:1990:25). Rather, it is about:

- undertaking a full land audit of land rights and land use (*de jure* and *de facto*);
- negotiating a settlement or set of agreements between all affected parties that can become legally binding and;
- the registration (and possible survey) of the new agreements.

In other words it is about reaching agreement between all the stake-holders involved, but also in a way that creates legal evidence that will supply the parties with security of tenure in the long term in case of a dispute. That is, adjudication should lead to the creation of certain, unambiguous title deeds, contracts and agreements. The legal evidence in these title deeds should make it unnecessary for a court to make any additional decisions at a later date as to who has rights in that parcel of land.

To re-create property, clear the title, extend tenure security to a wider range of people, and improve the land value, the land professional should assess whether:

- the range of stake-holders with interests in the cloudy parcel, both individuals, groups and government, are in agreement with the way each of the bundle of rights (both land rights and land use) in the parcel is structured and whether and how they want it altered;
- all third party rights are presently protected, not just by examining the registry records, but also by adjudicating the *de facto* rights and claims in the parcel;
- all the parties who have interests in relation to planning and land use have knowledge about the existing *de facto* situation, and if this situation is acceptable to them. Wherever possible, a new set of conditions of title should be registered which facilitates the *de facto* land use.

In this way the parcel will move from being a "...heterogenous item..." (McLaughlin and de Sotho:1994:308) to one which has certainty, security for a wider range of parties than before and increased market value.

Parcel based national land reform

Some people might argue that even if a property owner re-created property on their own parcel, that because of the inequality in the distribution of land in the country, their parcel could well, under certain circumstances, remain cloudy or become cloudy again. For example, if the land was invaded by another set of people even though the farmer had reached agreements with the first set of invaders.

This is of course true. Until and unless large portions of the country are seen to have been redistributed to the historically disadvantaged, property owners in general could have their 'ownership' rights eroded. Such an approach of re-creating property would probably only benefit

owners who:

- had a finite set of right holders or claimants on their land and wished to settle with these people and;
- wished to sell their property and could not do so because of its heterogeneous nature;

However, each cloudy land parcel sorted out would also benefit the farm workers on the parcel and remove them from the larger equation of land hungry people in the country. It is hoped that this would be accumulative, so that the land reform program of the Department of Land Affairs on the one hand, and of private land owners re-creating property rights on the other, would lead to a situation where both the historically disadvantaged and advantaged would eventually have security of tenure.

CONCLUSION

This has been an attempt to develop an intellectual framework which would make it possible to more fully understand the technical processes associated with land registration. Part of the analysis was focused on how the wider socio-legal environment relates to, and interacts with, these technical processes and that under certain conditions property rights need to be re-created.

While this was explicit in the paper, what is implicit is that, given the complexity, cost and capacity requirements related to these technical processes, it may well only be practical to clean up cloudy title for high value land, or when creating high value land. By unpacking these technical processes it has been possible to assess that it is probably not feasible to use these processes, as they are presently structured, for cleaning up cloudy title in low value land. It would only become viable if government were to subsidise the technical processes, and government has already indicated that this is not generally possible, or if the investor associated with the land paid for the technical process.

A way forward for low value land would be to create alternative technical processes for cleaning up cloudy title, which could also be used for other purposes such as subdivision and transfers. Such technical processes should:

- facilitate agreements being reached by local communities and individuals working with local government structures;
- avoid the involvement of people from outside the local area -such as land professionals and higher levels of government;
- avoid the need to use government records (registry, land use plans) which are not available at the local level or which cannot be understood at the local level;
- not rely on high levels of knowledge in relation to planning, land development, government policy, financial budgeting and;
- not rely on routine coordination and linkages between higher levels of government.

Instead technical processes should be developed which can be used by low value property owners to increase the certainty and tenure security in their lives. Such technical processes, as has been argued elsewhere (Fourie:1996; Alberts *et al.*:1996), should be built on:

- local level registries possibly attached to local government structures;
- local para-legals or land administrators attached to the local government;
- land information held at the local level in such a way that it is transparent and accessible to ordinary people;
- outside boundaries registered at central level, with social land tenure options dominating within the outside boundaries;
- strong local government with capacity in the area of managing planning and land development, as well as record keeping;
- sound institutional linkages between local government and other government institutions.

Finally, Kelly argues that "...democracy is a device that allows conflicting minorities to reach relatively fluid compromises. It keeps sub-groups from getting stuck on some locally good but globally inferior solution." (1995:510). Building adjudication and participation procedures into the technical processes associated with surveying and land registration of both low and high value property is largely about reaching these compromises, so that a globally superior solution can be developed.

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