

LAND REFORM

Why failing to revise land policy will fail aspiration of millions

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The need for [land expropriation](#) must be characterised and understood as being foremost about social justice and a constitutional imperative. It is about the majority's anticipation of the reversal of a deliberate, systematic and legislated eradication of a nation's sense of dignity, belonging, culture and history. It is a wound that has festered long enough.

CURRENT POLICY VS ASPIRATIONS OF THE MAJORITY

The irony is that current policy (with or without the proposed amendment of section 25 of the Constitution, 1996) does not and has not sought as its objective, a wholesale project that would enable widespread redress aimed at benefitting the black majority as owners of land.

Instead, land policy is premised on three pillars only, which are often incorrectly used interchangeably, when they mean different things with distinct objectives and focuses.

These three pillars are: restitution, land redistribution and tenure reform.

1) RESTITUTION

Restitution is governed by the Restitution of Land Rights Act No. 22 of 1994 as amended ("the Restitution Act"). This piece of legislation is useful only for those families and/or individuals and/or communities who are able to show that they were inhabitants and/or occupiers of specific land which they were dispossessed of after 19 June 1913 as a result of historically racially based laws, having been paid no compensation.

The initial deadline for the lodgement of land claims was 31 December 1998. The Restitution Amendment Act, 2014, however, extended the deadline for the submission of claims to 29 June 2019. While claimants may still lodge restitution claims, the Constitutional Court ruled in the "*Land Access*" judgment that there had not been adequate public consultation leading to the Amendment Act. The effect is that while claimants may still lodge new land claims, those claims may not be researched and/or investigated until such time that the Commission of Restitution of Land Rights ("the Commission") completes and settles all claims lodged prior to 31 December 1998.

The process of lodging a land claim may sound easy enough, except, there are inherent, systemic hurdles that make it difficult for land claimants to achieve the restitution of land and here are some of the reasons:

- most families have to rely on oral history and the existence of elders with knowledge of the description, location and extent of land which their descendants previously occupied. The inherent difficulty is the burden of proof associated with proving these claims, although it is the Commission a statutory body, founded in terms the Restitution Act which has the obligation to investigate, research and settle claims and make recommendations to the Minister of Rural Settlements and Land Reform;
- the work of the Commission is critical to the nature and quality of the investigations and research that goes into the process of whether or not a claim is ultimately recommended as being valid. It is worth pointing out that the Department budget allocation has been on a steady decline, enjoying a woeful less than 1% of the national budget. The budget allocation to the Commission under the Zuma administration has dwindled from about R1.85 billion down to R930 million in the 2016/17 financial year.
- even in instances where a landowner may recognise the validity of a claim, he or she may challenge the amount of compensation that is offered by the State to purchase the land, for purposes of restoring the land to the land claimants. In the case of a landowner that is

unwilling to sell his or her property, protracted, lengthy and time-consuming litigation is inevitable;

- land claimants are given an election to either opt for restoration of the actual land claimed and/or financial compensation. With a majority of land claims concentrated largely in rural areas, and with rapid urban migration and demand for work opportunities in the cities, it is hardly surprising why financial compensation would be a viable option for most claimants;
- only the Land Claims Court is able lawfully to sanction the award of land, with the concurrence of the Minister and the Commission. This typically leads to laborious, time-consuming, expensive and extremely lengthy litigation. Access to legal representation on the part of many poor communities has been a factor that has automatically kept communities from claiming and being awarded claimed land.

2) LAND REDISTRIBUTION

Land redistribution as a second pillar of land policy has as its bias, a strong emphasis on agricultural land. In 1998, the Mbeki administration had set a target of 30% of the land being transferred to emerging black farmers.

While targets are necessary, it is even more important to ensure that, one designs programmes, learning institutions and specialised agricultural universities, specifically geared towards stimulating interest in transforming the agricultural economy aimed at encouraging commercial farming from grassroots levels.

Needless to say, the redistribution policy, much like restitution, does not have as its end goal, the objective of ensuring a sizeable percentage of black participation in food production ownership. Hap-hazard and inconsistent implementation of different policies over the past two decades have not yielded the desired results.

The pervasive nature of corruption and its effect in almost all spheres of government and the private sector have similarly marred any real hopes of ensuring that large numbers of emerging farmers enter into and thrive in the agricultural and food production industries.

3) TENURE REFORM

Although the current policy and legislation on tenure reform seeks to elevate, protect and secure the rights of those working and living on farms from unwarranted and unlawful evictions and to assist labour tenants to acquire land rights, we have, over the years notwithstanding, witnessed unlawful evictions in many cases, despite the existence of the legislation.

Perhaps most tragic in the sphere of tenure reform, has been the State's failure and neglect to form mechanisms and a process within which labour tenants could lodge claims. For instance, it took 20 years and applicants in the *Mwelase* case to challenge the State to appoint a Special Master, whose role would be to receive and process labour tenants claims over land as envisaged in the Land Reform (Labour Tenants) No. 3 of 1996. This Act was enacted pursuant to section 25(6) of the Constitution. Curiously, the State had failed 20 years after the promulgation of the Act, to take any steps to elevate the rights millions of labour tenants.

WHERE TO FROM HERE?

The success or failure of achieving land reform, is not entirely dependent on whether or not compensation is paid for the expropriation of land by the State for land reform purposes.

Even if the Constitution were to be amended in order to make it possible for zero compensation to be paid for the expropriation of land, the institutional, political, bureaucratic and practical challenges remain firmly with us.

We have seen that even in instances where the State has paid landowners compensation for land purchased, former landowners remaining on purchased land and continuing with business operations, given the cumbersome and bureaucratic nature of the workings of the institutions remains a reality.

Equally, in the absence of legislation making it compulsory for the State to provide meaningful post-settlement support, land reform goals will continue to elude us.



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