

Navigating the Complexities: Land Reform in Post-Apartheid South Africa

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<p>Received: 22 Apr 2024; Received in revised form: 29 May 2024; Accepted: 08 Jun 2024; Available online: 17 Jun 2024</p> <p>©2024 The Author(s). Published by International Journal of English Language, Education and Literature Studies (IJEEL). This is an open access article under the CC BY license (https://creativecommons.org/licenses/by/4.0/).</p> <p>Keywords— Land Reform Policies, Democracy, African National Congress, Land without compensation, Economic Freedom Fighters and Zimbabwe.</p>	<p><i>In the nearly three decades since the advent of democracy in South Africa, land reform has remained a critical issue. The African National Congress (ANC) introduced Land Reform Policies (LRP) in 1994, aiming to address three core aspects: restitution, reform, and redistribution.¹ In 2017, the ANC signalled its intent to begin land distribution without compensation following the amendment of Section 25 of the South African constitution.² However, progress has been slow, with only 9% of farmland transferred to date. Corruption and other factors have hindered effective land distribution. The ANC's historical success in land dispossession between 1994 and 2004 contrasts with recent difficulties. Their focus on capital-intensive farming has limited alternative livelihood options for beneficiaries. Moving forward, addressing corruption and considering diverse approaches will be crucial to achieving equitable land distribution for Black South Africans. This paper sheds light on the complexities of land reform, emphasizing the need for a multifaceted approach that balances historical justice, economic viability, and social aspirations.</i></p>

I. INTRODUCTION

The term "land reform" describes a deliberate modification in the ownership or control of agricultural land, the cultivation practices used, or the way agriculture is connected to the overall economy. It includes all of the different actions taken, frequently by the government, to achieve a fairer distribution of agricultural land. It is almost three decades since the dawn of democracy. The African National Congress came with Land Reform Policies (LRP) in 1994, the

policies were developed for three things: restitution, reform, and redistribution. In this context the meaning of restitution, is to restore dispossessed land rights.³ A person or community dispossessed of property after 19 June 1913 because of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.⁴ Reform meaning in this context is to upgrade the rights of the people who insecure the land tenure. A person or community

¹ Land Reform: Provision of Land and Assistance Act, Act No. 126 of 1993.

² Section 25. Property.

³ Land Reform: Provision of Land and Assistance Act, Act No. 126 of 1993.

⁴ The Constitution of Republic of South Africa, Section 25(7) property clause.

whose tenure of land is legally insecure because of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.⁵ Redistribution in this context is to transform racially biased land ownership patterns.⁶

Since then, in 2017 the African National Congress held a conference where it made indications that they will start the process of land distribution without compensation after the amendment of Section 25 of the constitution of the Republic of South Africa.⁷ Since then to this date, it shows that only 9% of farmland has been transferred and this is due to corruption and other factors. The African National Congress land dispossession worked well between 1994 and 2004. Even though their approach has been unworkable and prone to collapse after 2004. This is because they were not focusing and still not focusing on other means to make a living and they also failed to recognise beneficiaries' aspirations and capabilities, rather they have been focusing on farming, especially capital-intensive farming. Even though ANC is failing to distribute the land to the Black South Africans, their strategies focus too much on agricultural outcomes and transferred ownership.⁸

Through Land Reform strategies people will lose connection with nature. South Africa will not archive Social Justice. The climate is changing rapidly. Most farms redistributed are eroded by the previous owners who used to farm on them, they will need people or state to go deep in their pockets for them to become productive. The past and the future of the land holds the ability of the land to give what people want. Ecological health is intimately intertwined with Socio-economic development and human well-being. The ecosystem is influenced by how people use the land. People are responsible for future use of the land. Most South Africans don't know how to use the land after being given except to do farming. Almost 90% of the land redistributed under Section 25 is not being productive.⁹ This situation not only contributes to

increasing levels of poverty and unemployment among these land reform beneficiaries, but also threatens food security.

II. WHAT ARE SIGNIFICANT WRONGS WHICH CAN BE CORRECTED?

The Elites captured the land reform agenda. There is this group of people who benefit from this agenda more than the poor. The people with powerful voices, people who are influential, traditional leaders, large-scale white commercial farmers, and agribusiness corporates.¹⁰ This has arisen in part because a once-effective civil society sector has lost capacity: most of its leadership went into government or consultancy, and its voice is barely heard except in relation to issues of traditional leadership. Farmworkers are weakly unionised, and small-scale farmers do not have their interests adequately represented within organisations such as the African Farmers Association of South Africa.¹¹

There aren't plenty of forums available for community members to voice their opinions, but in those where agreements have been reached between traditional leaders and mining companies, they are starting to stand up for their land rights. Although the minimum wage was raised by 50% as a result of a wildcat farmworker's strike in the Western Cape in 2012, the trend of mechanisation (and evictions) on commercial farms has continued. The administration disregarded the requests of the labour force for their own land. Therefore, it should come as no surprise that the former Minister Nkwinti was able to declare that the government now aims to "recreate a class of black commercial farmers" or that traditional leaders have gained official policy support for their aim of obtaining private ownership of community land or that profitable opportunities to serve as mentors and partners to beneficiaries have been extended to white commercial farmers and consultants.¹²

⁵ The Constitution of Republic of South Africa, Section 25(6) property clause.

⁶ Restitution of Land Rights Act, Act No. 22 of 1994.

⁷ Electronic Deeds Registration Systems Act 19 of 2019.

⁸ Land audit 2017.

⁹ 2010 SAPA

¹⁰ Mojalefa Lehlohonolo Johannes Koenane 2017.

¹¹ Ben Cousins, 2016. Land reform in South Africa is failing. Can it be saved?

¹² <https://www.dailymaverick.co.za/article/2018-02-27-cabinet-reshuffle-gugile-nkwinti-inherits-a-water-department-that-may-tip-sa-into-chaos/>.

III. THE AFRICAN NATIONAL CONGRESS AND THE ECONOMIC FREEDOM FIGHTERS LAND WITHOUT COMPENSATION IDEA.

Political parties are trying to change the land reform agenda of giving back land with compensation. We have seen in the past few years during the Economic Freedom Fighters rallies led by their President Julius Sello Malema, that they are trying to win supporters by promising land without compensation.¹³ It is no surprise that political parties often invoke land dispossession and the need for redress in attempts to mobilise supporters. Political rhetoric draws on a narrative in which white farmers and foreigners are the villains, black South Africans are the victims, and government are heroes rising to the rescue. Land discourse is typically dominated by a political fantasy centered on race.

This agenda of the Economic Freedom Fighters to give land without compensation should first be compared to ZANUPF decision in Zimbabwe to establish Compensation Committee under its Land Acquisition Act to permit the compensation of seized land for white former commercial farmers who have been evicted. The government of Zimbabwe purchased property, built infrastructure, and offered support services for resettlement programs in the beginning of the 1980s.¹⁴ Approximately 4,500 farmers and organizations had about 6,000 farms that were taken over during the big land reform that began in 2000. 4.1 million hectares are currently home to about 145,000 people under smallholder relocation programs. But there was a heavy price to pay for this deed. Eight years of economic collapse paid for it collectively for the entire nation.¹⁵ Deindustrialization, a loss of agricultural export income, and employment losses were the results of this collapse.

The land reform movement was marked by unrest, evictions, and violence. South Africa needs to take lessons from the past and stay away from haphazard land conflicts. To strike a balance between societal goals, economic viability, and justice, a diverse strategy is necessary. However, if the Zimbabwean

experience fails to give some essential lessons for South Africa, it would be smart to highlight many realities that ought to prompt decision-makers to reevaluate this fresh approach. With the advantage of hindsight, the case of Zimbabwe teaches us that it is not a good idea to expropriate land without compensation. Zimbabweans may have taken over the land 18 years ago without paying for it, but they paid for it all at the end of eight years of deflationary economic growth that resulted in job losses, deindustrialization, and lower export earnings from agriculture.¹⁶

The cost of Zimbabwe's land reform was estimated by economist Eddie Cross in 2009 to be 20 billion dollars. This figure included lost export earnings, imported food aid, and missed economic growth that could have maintained Zimbabwe's once-promising economy if it had not taken over farms without compensation. Soon, the South African government will learn how difficult and complicated it is to expropriate land without compensation. The Zimbabwean government is making the fundamental correction it made over two decades ago, which is to compensate farmers. The anticipated expenses of this compensation are expected to reach eleven billion dollars. This comes after years of over 90% unemployment and dull growth. The lesson of the story is that someone else will ultimately be responsible for paying the price if the government refuses to reimburse the commercial sector directly for land improvements.

The entire economy and its citizens will be forced to pay for confiscated land through lost agricultural export profits, job opportunities, and other factors, which we like to refer to as the "compensation phenomenon." Two immediate points in the South African situation are worth mentioning: the policy's consequences and the challenge of executing expropriation without compensation. First off, how would the law take care of the farm's assets and improvements if the constitution were changed to permit land to be taken without fair compensation? Including fixed and moveable assets, the land alone

¹³ <https://www.fasken.com/en/knowledge/2021/12/15-expropriation-without-compensation>.

¹⁴ Land Reform in South Africa: The Politics of Expropriation Without Compensation pp 99 – 119 (2022).

¹⁵ <https://theconversation.com/settling-the-land-compensation-issue-is-vital-for-zimbabwes-economy-89384>.

¹⁶ <https://www.aljazeera.com/opinions/2020/9/20/who-is-to-blame-for-zimbabwes-land-reform-disaster/>.

represents about 10% of the entire value of a typical farm operation. Would sunk investments, which comprise the remaining 90%, such as machinery, general farm infrastructure, and other assets, also be vulnerable to expropriation without fair compensation? The scientific question that arises is this: Would it be prudent for the government to pay farmers 90% of the compensation they receive for improvements to their land in order to obtain the 10% that represents the actual land value, if compensation is owed for farm assets and not the land itself?¹⁷

The agricultural land in South Africa is seriously indebted. With about thirteen billion dollars (160 billion rand) in farm debt resulting from title deeds to secure loans, it is unclear how the government will manage indebted land.¹⁸ Will the government pay back banks that are technically not entirely owners of that land through debt if farmers are not compensated? Thirteen billion dollars would be removed from the banks' books if the government was found not guilty of paying the banks. If the government agrees to pay off this debt, it will go against policy and be considered expropriation with compensation, with the difference being that the bank would receive the money rather than the farmer. Assuming the government is prudent enough, it should reimburse the commercial farmer for land improvements and the bank for the farmers' debt.

There are circumstances in which farmers can receive "zero compensation" if the government assesses the worth of the farms' investments and infrastructure and then uses that same value to pay off bank debt. It is also possible for farms to be seized to be bankrupt, in which case the government would have to compensate the banks for the remaining debt owing by the farmers whose land they are taking.¹⁹ There is no need to modify any laws in order for this situation to be permitted under the current constitution. Soon, the South African government will learn how difficult and complicated it is to expropriate land without compensation. Land reform might have

completely stopped by then. The lenient reforms that could permit the government to seize land without retribution could minimize the public's anger and cause more anxiety.

This was seen in Zimbabwe when commercial farmers sued the government over land expropriation. Cases that would have taken a generation for the government to handle flooded the courts. Then, in 2003, in yet another act of lunacy, the constitution was changed to declare every lawsuit that commercial farmers had filed in court to be void. In one case, the Zimbabwean government wiped ten billion dollars in land value in an attempt to eliminate the headaches resulting from land expropriation. With the help of the Zimbabwean experience, which most people are eager to ignore and disregard, we are able to draw a crucial conclusion that ought to direct South African land reform policy. This lesson is that in a quasi-capitalist system, expropriation without compensation does not exist. In South Africa, the legacy of apartheid-era land expropriation has left a deep wound that has to be healed.²⁰ But in modern economics, the timeless concept of fair and just compensation which need not be based on market value serves as a crucial point of reference.

The Land Reform is time consuming. 'State capacity' is crucial, and comprises strong leadership and management, adequate budgets, appropriate policies, sound institutional structures, efficient procedures and an effective system for monitoring and evaluation. Monitoring and evaluation are critically important if mistakes and false starts are to be key sources of lessons, but in relation to land reform has been highly ineffective.²¹ The lack of adequate data on the rural economy provided by StatsSA compounds the problem. Since 1994, there has only been one shoddy nationwide survey of small-scale farming, and farm size is not included in the census data. The property clause, which requires compensation to be paid for land acquired by the state, is not a fundamental constraint at present. It is feasible to

¹⁷ Johann Kirsten and Wandile Sihlobo, 2018.

¹⁸ Peter Rosset, *Promise Land: Competing Visions of Agrarian Reform*.

¹⁹ <https://qz.com/africa/1218309/south-africa-to-take-land-without-compensation-as-zimbabwe-backtracks-on-seizing-white-farms#:~:text=There%20might%20also%20be%20situations>

%20where%20seized%20farms,does%20not%20require%20an%20amendment%20of%20any%20law.

²⁰ <https://hir.harvard.edu/this-land-is-our-land-expropriation-without-compensation-in-south-africa/>.

²¹ Ben Cousins, 2016, *Transformation Critical Perspectives on Southern Africa* 92(1):135-157

purchase farms for less than their market value as long as the pay is "just and equitable."

Court intervention would undoubtedly bring down land reform to a crawl at prices far less than, say, 15% below market value. Of greater significance, land acquisition would become considerably more affordable if the allocation for land reform was raised from its current level of, say, 0.4% of the national total to 2%. Beyond the constitution, the biggest limitation is a lack of political will. In other words, rather than impeding land reform, the constitution actually makes it possible.²² Crucial to the country's strategy is Section 25(6), which mandates that the state protect Black South Africans' land rights. Except for private property, all types of property are safeguarded. It is critical to take action to prevent the impoverished from being evicted, as there is proof of capitalist groups attempting to seize control of the state and mining enterprises in community areas having a terrible human rights record. Without requiring private ownership, litigation and related activities must make an effort to force the state to fulfil its constitutional commitments to secure tenure.²³

Someone will have to pay somewhere in the economy if the South African government takes private land for free.²⁴ This someone could be directly affected by lost export earnings and on-farm job opportunities in the present and future, or indirectly through long-term economic decline that will reduce the purchasing power of money, reduce pensions and savings, and cause deindustrialisation, which will restrict future economic growth and off-farm job opportunities for the current generation.²⁵

IV. RECOMMENDATION

In conclusion, the complex issue of land reform in South Africa remains multifaceted and challenging. Despite the African National Congress (ANC) implementing policies for restitution, reform, and redistribution, the actual transfer of farmland has been limited, with only 9% of land successfully redistributed since 2017. Corruption and other factors

have hindered progress in achieving a fairer distribution of agricultural land. The ANC's historical approach, while initially successful between 1994 and 2004, has faced significant challenges. Rather than diversifying strategies to address beneficiaries' aspirations and capabilities, the focus has remained disproportionately on agricultural outcomes and transferred ownership. This narrow approach has contributed to the inefficacy of land distribution efforts. Furthermore, the ecological impact of land reform cannot be overlooked. As land changes hands, ecosystems are affected, and the ability of the land to provide for people's needs is at stake. Unfortunately, many redistributed farms suffer from erosion due to previous mismanagement. To make these lands productive, significant investments are required, either from individuals or the state. Ultimately, the success of land reform hinges on recognizing the interconnectedness of ecological health, socio-economic development, and human well-being. South Africa must find a balance that not only addresses land ownership patterns but also ensures sustainable use and benefits for all. Otherwise, the consequences increased poverty, unemployment, and threats to food security will persist.

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CONFLICTS OF INTEREST:

No conflict of Interest.

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²² Section 25(6)

²³ Upgrading of Land Tenure Rights Act, Act No. 112 of 1991.

²⁴ <https://qz.com/africa/1218309/south-africa-to-take-land-without-compensation-as-zimbabwe-backtracks-on-seizing-white-farms>.

²⁵ Wegerif, M. (2021). The impact of Covid-19 on black farmers in South Africa. *Agrekon*, 61(1), 52–66.

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