

# Strategic Analysis Paper

9 April 2015

## Challenges Confronting South Africa: Land Reform

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### Key Points

- The pace of land redistribution under the principle of “Willing Buyer, Willing Seller” has been so slow and so heavily criticised that the ruling ANC has signalled its intention to abandon the policy.
- The failings of “Willing Buyer, Willing Seller” have provided fertile ground for populist politicians, who have called for the expropriation of land without compensation.
- The experiences of Zimbabwe and Namibia provide examples that the South African authorities can draw upon as they formulate their new land reform policies.
- A “50-50” framework that shares out land while also ending the ability to make historical claims on particular properties, may offer South Africa a way forward that, while still imperfect, avoids extreme measures.

### Summary

More than a century after the passage of the Natives Land Act and 21 years after the end of the apartheid regime, land ownership continues to be a vexed question in South Africa. Less than ten per cent of the target set in 1994 of returning 30 per cent of the land taken under colonialism and apartheid has been transferred to its previous owners. The original target date of 1999 has subsequently been pushed back several times and there is widespread

dissatisfaction with the essentially free-market principle of “Willing Buyer, Willing Seller” that has underpinned the land redistribution efforts.

What, then, has gone wrong with a programme that, on the surface at least, would seem to have been a very reasonable approach to rectifying the injustices of the past? What is the government proposing in its place and are there any experiences from its neighbours that South Africa may be able to draw upon?

## **Analysis**

### ***Willing Buyer, Willing Seller***

The Natives Land Act of 1913 formalised the dispossession of black South Africans from their lands that had begun in earlier decades. Under the Act, almost 70 per cent of the population were effectively prevented from owning or leasing agricultural land, barring some seven per cent (increased to 13.5% in the 1930s) that would come to form the so-called “homelands” or “Bantustans” of the later apartheid era. Black tenant farmers and sharecroppers became little more than serfs. While the Act enforced the end of black ownership of the most fertile lands, it also had as a primary goal the removal of the competition faced by poor and unskilled white workers from their black counterparts. The Act was singularly successful in achieving those aims, so much so that, even two decades after the end of apartheid, its effects continue to be felt.

Since 1994, the principle of “Willing Buyer, Willing Seller” has been the bedrock of the approach to land ownership and redistribution taken by post-apartheid South African governments seeking to address poverty and rectify the injustices of the past. In so doing, it conforms to the requirements of Section 25 of the 1996 Constitution, carefully negotiated by the African National Congress (ANC) so as not to scare off investors and cause a mass exodus of skilled agricultural practitioners, with an accompanying fall in domestic food security and export earnings. Under Section 25, property rights are explicitly upheld – regardless of how that property may have been acquired. It also specifies the limited circumstances in which expropriation may be applicable and specifies that a just and equitable compensation must be paid for any such property.

As its name implies, willing buyer, willing seller relies on both the vendor and the government – acting as purchaser, although that was not originally the case – coming to an agreement for the sale of a parcel of urban or rural land, or even a portion of a farm, that is acceptable to both parties. After playing the role of buyer, the State may then act as financier to aspiring black farmers and allocate them land from the purchase. It was envisaged that, in as many cases as possible, the white farmer goes on to become a mentor to his/her new neighbours, passing on skills and expertise.

### ***Failings of the Current System***

After winning the country’s first all-race election in 1994, the ANC set a target of returning 30 per cent of the land taken under colonialism and apartheid to its previous owners by

1999, with 1998 as the original cut-off date for the lodgement of land claims. The 1999 target has since been extended, most recently – and without success – to 2014. To date, only 7.5% of the land has been returned and, in 2014, the government amended the legislation to give those who missed the 1998 cut-off date another five years to lodge their claims.

Current estimates indicate that around 80 per cent of South African agricultural land remains in the hands of approximately 35,000 white farmers and large agribusinesses. According to Statistics South Africa, in 2014 whites made up 8.4% of the total population of 54 million. While often perceived, and portrayed, as being opposed to land reform, many white farmers are not, and are willing to act as mentors, generally favouring a model under which a stake in the equity of a farm is transferred to farm workers, rather than expropriated. Such a model, they argue, would maintain farm profitability, increase worker incomes and not affect food production. A primary concern for many white farmers is the sense of uncertainty that the slow pace of land redistribution has engendered and the possibility that it may lead to the adoption of more radical measures.

Willing buyer, willing seller has attracted criticism for a number of other failings, too. A major problem is that it relies on the willingness of white farmers to sell their land, or at least a portion of it. The number of farmers willing to do that has obviously been low and the purchase prices demanded of the government have sometimes been inflated. Negotiations for the sale of properties can thus be very lengthy.

A related problem is the small size of the farms, which are usually parcels of the larger farm that was purchased and then broken up into smaller sized units. The intention is to facilitate the redistribution of land to as many black farmers as possible, but it also means that the new farms are frequently too small to be economically viable, especially when located in more climatically-challenging regions. The lack of post-acquisition support for new landholders, who frequently have little or no farming experience, is another factor that contributes to the failure of farms allocated under the existing arrangements. Such farmers require financial assistance, technical expertise, machinery and irrigation equipment if they are to make their new farms profitable, but rarely receive any of those inputs. They are often reduced to little more than subsistence farming and, in many cases, formerly productive farms simply lie fallow. One estimate – from the government itself – according to *The Economist*, suggests that as much as 90 per cent of the farms that have been redistributed are unproductive.<sup>1</sup> Such problems are not helped by the underfunding, lack of training provided to and short-staffing of the main agency overseeing land reform, the Department of Rural Development and Land Reform, and the lack of funds allocated to land reform by the government, usually only around one per cent of the budget.

Selecting the most appropriate claimant(s) to a farm once it has been acquired by the government is frequently a difficult and complicated process, adding considerably to the length of time taken in redistribution cases. The allocation of land based on historical claims has been a key tenet of the ANC's land reform efforts. Although it acts as a complicating

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<sup>1</sup> 'I Had a Farm in Africa: South Africa Takes a Populist Turn on Land Reform', *Economist*, 28 February 2015.

factor, having been a cornerstone of government policy for so long, together with the way that it taps into the sense among many South Africans of facilitating the return of land taken “by them, from us”, it will be very difficult for the government to walk away from. That is even more the case after the ANC re-opened the process from 1 July 2014 and extended it to those who were evicted from their lands before 1913.

Another failing is that more people have chosen to receive restitution in the form of cash payments, rather than land. This has been particularly the case in urban areas, where the majority of the claims that have been settled thus far have been located. The claims process within urban areas is generally less complicated and the recipients, perhaps not surprisingly, have favoured monetary compensation over physical land. When paid to those living in rural areas, the comparatively small sums involved have contributed to the continuation of rural poverty and have not facilitated the movement of black farm workers onto properties of their own.

### ***Other Possibilities?***

As a consequence of the above factors, there is a growing sense of impatience among the large numbers of landless South Africans at the slow pace of land reform to date and the ruling party is becoming concerned by the fertile ground that the emotive issue provides for the populist Economic Freedom Fighters (EFF) party. Led by the firebrand former leader of the ANC Youth League, Julius Malema, the EFF has called for the expropriation without compensation of land owned by white farmers. A politically popular move, the expropriation call resonates with many voters at a time of high unemployment, service delivery failures, [ongoing widespread power cuts](#) and the continuing scandal over the taxpayer-funded multi-million rand upgrade to President Jacob Zuma’s [Nkandla homestead](#), all while living conditions for large numbers of black South Africans have improved little since the end of apartheid.

A shrewd politician himself, President Zuma stated as early as 2013 that the government would abandon the willing buyer, willing seller principle. Since the rise of the EFF, to continue with the policy would only hurt the ANC and the party presumably feels that any electoral backlash from its abandonment would be far outweighed by the perception that it is tackling land reform with renewed vigour.

In 2014, the ANC outlined a so-called “50-50” policy that it was considering introducing. Although little more has been said on this proposal, it is shaping up as a likely option. While still flawed, it may nonetheless offer something of a middle way.

Under this proposal, the government would buy half of some farms (without giving any indication of which farms) and then divide up the land among the various farm workers on the property. The formula to be used would see people who have worked on the farm for ten years receive ten per cent of the land purchased by the government, those who had worked there for 25 years a 25 per cent allocation and those who had worked there for 50 years 50 per cent share. On the face of it, and putting aside the uncertainties surrounding the acquisition of the farms in question, the issue of the productivity of such small-scale farms returns, as does the subsequent effect on food security.

President Zuma used his 2015 State of the Nation Address to announce a number of measures intended to expedite the transfer of land to black South Africans. Under the Regulation of Land Holdings Bill, foreigners will no longer be able to purchase new land in South Africa, although long-term leases of at least 30 years will be available. Between five and seven per cent of South African land is estimated to be foreign-owned, suggesting that, as in many other countries, the public perception of the amount of land owned by foreigners is often greater than the reality.

In a move perhaps intended force the break-up of large properties, South African citizens themselves will not be permitted to own more than 12,000 hectares. That figure is a largely unqualified amount that the government has said that it considers to constitute two average-sized farms.

The Regulation of Land Holdings Bill is apparently not to be retrospective, a decision that will help to avert damage to the economy and adversely affecting the rural poor. The Bill is intended to be a key land reform mechanism under which the government will be able to settle all outstanding claims by 2019 and transfer more than 90,000 hectares of land to smallholder farmers and people who are currently farm labourers, possibly using the “50-50” framework that the government ‘is exploring’.<sup>2</sup> According to the president, an Office of the Valuer-General is being established to facilitate the (presumably “fair”) nationwide valuation of property under the Property Valuation Act that, ‘... once implemented will stop the reliance on the Willing Buyer-Willing Seller method in respect of land acquisition by the State.’<sup>3</sup>

While the ANC will find it increasingly difficult to defend the status quo, it also clearly needs to speed up the process of change – and in such a way as to safeguard the economy that its budgets depend upon. It will thus seek to avoid extreme measures such as expropriation, and “50-50” does appear to be a favoured option at this point.

At this point, it is worth examining the experiences of two of South Africa’s neighbours that have also been confronted with the need to address similar highly inequitable systems of land ownership: Zimbabwe and Namibia.

### ***The Zimbabwe Experience***

Upon achieving independence in 1980, Zimbabwe, like its neighbour to the south, had a situation in which the vast majority of land was owned by the country’s white minority. That land was highly productive and both pre-independence Rhodesia and independent Zimbabwe were frequently described as “the breadbasket of Africa” and a rare sub-Saharan African success story. The imbalance in land ownership was recognised by both the Mugabe Government and the then recently-installed Thatcher Government in London. Between 1980 and 1999, the willing buyer, willing seller principle – financed by Whitehall to the tune of £44 million – was employed to address the issue. Slow progress, coupled with the end of British funding, led to increasing frustration that eventually culminated in the invasion of white-

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<sup>2</sup> Zuma, J., ‘State of the Nation Address 2015’. <<http://www.gov.za/president-jacob-zuma-state-nation-address-2015>>.

<sup>3</sup> *Ibid.*

owned farms and the expulsion of the owners and their workers by so-called “veterans” of the Bush War against the Ian Smith regime. These war veterans frequently had close links to President Mugabe and the ruling ZANU-PF party and, almost invariably, no farming knowledge. Agriculture accounted for 20 per cent of gross domestic product and, consequently, the effect on the economy was profound. Zimbabwe went from being one of the continent’s wealthiest countries to a food importer ravaged by hyperinflation.

The experience of Zimbabwe provides a salutary lesson in the pitfalls of land expropriation. Although the farm expropriations were but the largest component of a wider economic catastrophe, the wholesale removal of skilled farmers and their replacement by those with little or no agricultural background – regardless of the validity or otherwise of any historical claims on the land in question – offers the virtual certainty of greatly reduced food security and a correspondingly adverse effect on the broader economy.

While it is tempting to worry that the South African future may offer a repeat of the Zimbabwean past, two important points are worth noting. First, a key difference between the two countries is that, unlike in Zimbabwe, liberation in South Africa was accomplished, not after a lengthy and brutal war, but ultimately by a process of negotiation and democracy. Although there are many who experienced firsthand the violence meted out during the apartheid era, there are none of the “war veterans” who are present in Zimbabwe. Second, agriculture in South Africa constitutes less than three per cent of GDP (although rural South Africa is home to a disproportionately large landless, unemployed and impoverished population).

### ***Land Reform in Namibia***

Namibia, on the other hand, offers a more promising contrast. Like South Africa and Zimbabwe, Namibia experienced a similar history of land confiscation (although not all of the country’s ethnic groups were targeted), racial discrimination and white-minority rule and land ownership.

Like its neighbours, upon independence in 1990, Namibia, too, sought to rectify the severe imbalance in land ownership. The willing buyer, willing seller method was formally adopted in 1995. A key difference, however, has been that, even while the government attempted briefly – and unsuccessfully – to introduce expropriation, the principle of no ancestral claims has always remained in place. In short, Namibian land claimants cannot claim specific parcels of land. The process is thus not bogged down in a lengthy process of identifying and verifying the historical rights of a claimant or claimants.

According to the Namibian Agricultural Union, approximately 9.4 million hectares, or over 60 per cent of the 15 million hectare target, have already been acquired by the authorities in Windhoek and returned to black Namibians. Across the border, as noted previously, only 7.5% of the 30 per cent target (representing 24.5 million hectares of the 82 million hectares of agricultural land in South Africa) has been redistributed by Pretoria.

Even so, land reform remains an issue in Namibia and the process does experience problems: the slow speed of the process (willing buyer, willing seller is often blamed); a

shortage of land for the government to purchase; and, as in South Africa, a lack of overall funding and support services and training for new farmers. During the November 2014 election campaign, the ruling SWAPO party reiterated its commitment to willing buyer, willing seller so that, even as it announced that it would continue with its goal of purchasing 15 million hectares of the country's total 35 million hectares of arable land by 2020, a sense of stability and certainty prevailed.

While problems certainly exist and, as in South Africa and Zimbabwe, the pace of reform and the rate of poverty alleviation disappoint many, the Namibian Government can nonetheless claim a very real degree of success.

It may, therefore, be time for South Africa to incorporate the Namibian approach to historical claims over specific tracts of land into its future policies. Admittedly, that might be easier to achieve in a country that is as vast and sparsely populated as Namibia. It is, however, also considerably more arid than South Africa, yet Namibian agriculture would not appear to have been adversely affected by the land redistributions carried out to date. Also, despite a similar growing dissatisfaction with the speed of change, the Namibian programme with its commitment to willing buyer, willing seller has unquestionably been more successful than that taken in South Africa.

### ***Looking Ahead***

Land ownership may not necessarily have the high visibility of the controversies surrounding the removal of lingering symbols of colonialism and apartheid, such as statues of Cecil Rhodes and Louis Botha, for instance, and it may be more distant for many urban South Africans, but it nonetheless has an innate resonance for all who suffered under the yoke of apartheid. If, however, pressure on the ANC continues to grow – particularly from the likes of the charismatic and populist Julius Malema – the likelihood of calls for more extreme methods of land redistribution, including expropriation, should not be ruled out. At that point, neither should the prospect of the ANC embracing such measures, no matter how reluctantly.

Whatever option it eventually chooses, the ANC will attempt to pursue a middle path between the status quo – which, arguably, has been considerably less successful than envisaged – and simplistic, populist measures such as expropriation. It will seek to do that while following the Constitution and without disrupting food production. It appears at this stage that the “50-50” approach may be the preferred policy in the future. Although not without controversy, which could well be exploited by opponents such as the EFF, a “50-50” framework that, as in Namibia, also ends the ability to make historical claims on particular properties, may offer South Africa a way forward that, while still imperfect, avoids the extremes of slowness and wholesale expropriation.

In addition, it is extremely important that any future land reform programme be adequately resourced, not only in terms of paying a fair market price for the land acquired, but also in terms of the funding necessary to ensure that new farmers are able to receive the training and financial support that they need to help make their farms viable businesses.

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Published by Future Directions International Pty Ltd.  
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