

Next steps towards land reform

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Introduction

The report of the Presidential Advisory Panel (PAP) on land reform and agriculture, completed in May 2019, was released in July. While we agree with the view that it is a helpful intervention, we are sceptical that it can or should carry the weight of expectation that has been placed upon it. It is an advisory report and needs to be set against the existing slate of policies being pursued by the state. A central weakness in the report is its failure to locate its recommendations within the current fiscal crisis, which will place tight limits on state expenditure in the foreseeable future. It recognises the severe capacity constraints and pervasive corruption within the state but makes recommendations rooted in the idea that the state will be able to fund, launch and oversee complex legislation as well as new agencies and other initiatives. There have been two decades of unrealistic targets, unmet deadlines, administrative failures and too many unsuccessful projects. A hardheaded debate about what is actually achievable, at the same time as enhancing agricultural production, is required. This discussion should be framed in terms of capacity, funding, priorities and production as well as equity.

Subsequently,¹ in August, the National Treasury issued a paper on 'Economic Transformation, Inclusive Growth, and Competitiveness: Towards an Economic Strategy for South Africa'.² Dealing with broader economic issues and providing some schematic comments on agriculture and land reform, its release caused a considerable stir in the Congress Alliance and heralds the possibility of significant policy adjustments. Against the backdrop of these two contrasting documents this article proposes viable routes forward for land reform.

Government land reform policy has been framed under three different programmes since 1994: restitution, redistribution, and tenure reform. The Advisory Panel usefully adds a fourth dimension - land administration. The latter is clearly closely related to tenure reform, and we will discuss the implications of their approach below.

Above all the country needs to restore certainty in the policy framework. Continually shifting paradigms, such as the possible reopening of restitution, and expropriation without compensation (ewc) are not conducive to substantial long term investment and job creation. The apparent commitment by the ANC to ewc - in as yet undefined form - undermines confidence for all landholders. There is a similar lack of clarity about the future of tenure in both the communal areas and on transferred land. It was clearly difficult for the Presidential Advisory Panel to achieve consensus on this and some other important issues placed before it. The recommendations are not always consistent and raise questions about capacity, agricultural production and the political control of land.

In the rural areas of South Africa as in the urban, people's highest priority is employment. Even in the midst of the enflamed debate about land in 2018, surveys of popular opinion confirmed this pattern. Both of these documents emphasise job creation in agriculture, and see smallholders as a key route to achieving this. The question arises as to whether farming in general and land reform in particular can play a significant part in reducing unemployment.

Budgets

South Africa's government and its state-owned companies have outstanding debts of over R3 trillion, a figure that is almost four times higher than it was in 2008 and 15 times higher than in 1992.³ Expressed as a percentage of GDP, debt now exceeds 60 per cent, and it shows little sign of slowing its upward trajectory. It has been politically difficult for the ANC government to control the rapidly growing public sector wage bill and the economy has not grown as quickly as anticipated; debt-servicing costs have in turn spiralled.

In these constrained circumstances the allocation from National Treasury to the Department of Rural Development and Land Reform (DRDLR) will decrease from just under R11 billion in 2019/2020 to R10,67 billion in 2020/21, before increasing again to R11,35 million in 2021/2022, according to the budget that was tabled in parliament in February 2019.⁴ The allocation for the restitution and land reform programmes was set to decrease

¹ Final Report of the Presidential Advisory Panel on Land Reform and Agriculture, 4.5.2019, released 28.7.2019 (PAP in footnotes). This followed the report by Parliament of South Africa, Report of the High Level Panel on the Assessment of Key Legislation, November 2017, which also included substantial recommendations on land reform (HLP in footnotes).

² This was released by Tito Mboweni on 27th August 2019 but the PDF on the web does not have a date: [www.treasury.gov.za/comm_media/press/2019/Towards an Economic Strategy for SA.pdf](http://www.treasury.gov.za/comm_media/press/2019/Towards%20an%20Economic%20Strategy%20for%20SA.pdf). The references and figures relevant to land reform suggest that these sections were written earlier. See p. 39: land transfers are given as 7.4 million ha. whereas more recent government figures are 8.5 million ha.

³ Centre for Development and Enterprise, Running out of Road: South Africa's Public Finances and What is to be Done (Johannesburg, 2019).

⁴ Finance Minister, Tito Mboweni. Budget, February 2019 on web.

from R6,5 billion in 2019/2020 to R5,9 billion in 2020/2021, and increase to R6,2 billion in 2021/2022.⁵ The breakdown of expenditure by function in the Budget Review puts all spending on land, agriculture and rural development (including R8 billion for the separate Department of Agriculture, Forestry and Fisheries) at some R30.7bn in 2020/21, rising slightly to R32.8bn in 2021/22. The allocation accounts for about 1.7 per cent of consolidated state spending and the rate of increase is one of the lowest for any department.⁶ This tight fiscal framework makes clear that policies requiring major additional funding have little prospect of being implemented.

Rural, Urban and Peri-urban

We welcome the panel's emphasis on the importance of urban land and on including urban areas within the framework of land reform policy and practice. This is clearly a priority. The major movement of people within South Africa is still from the rural to the urban areas. The major demand for land continues to be in the urban and peri-urban areas, where there is more access to employment, informal sector opportunities, services and retail outlets. Most land occupations are in these areas. How best to achieve land reform in urban areas is the subject of a separate CDE report and we will restrict ourselves to a few comments. At the outset, it is important not to create rigid boundaries in thinking about urban and rural. These are not disconnected spaces geographically nor in the lives of many people. We should think about these issues outside of silos and in the context of wider processes of economic and social transformation and fundamental challenges now facing South Africa.

The Advisory Panel report prioritises identification of state and municipally owned land for peri-urban resettlement as well as the definition of areas of urban expansion.⁷ Providing the more than a million sites needed is daunting but urgent. But provision should be more diverse than the standard, single - storey RDP house on a tiny plot. Renewal of higher rise inner city structures, both former residential and business premises, is one route. Many South Africans live on the peripheries of medium-sized and smaller towns in dense settlements. More attention should be given to such places and to population clusters within and adjacent to the former homelands; here especially, settlement planning should include some larger plots where land can be used for urban agriculture or for leasing. This is only one limited aspect of urban planning but urban agriculture is feasible in gardens and plots where water is available, both for nutritious domestic supplements and higher value produce, such as the Kula initiative in Gauteng. There are many examples of innovative, agriculturally related business developments oriented towards retail and leisure, including plant nurseries, cafes, restaurants, taverns, food and muthi markets in such peri-urban zones; planning should provide flexibility for these.

Restitution

Following the Restitution of Land Rights Act of 1994, over 80,000 land claims were lodged by the cut-off date in 1998. Significant progress has been made; the DRDLR reported to the Presidential panel in 2019 that 3.5 million ha of land had been transferred through the finalisation of 62,475 claims.⁸ But restitution was meant to be a limited and short-term process, designed to deal with the cases in which people and communities were forced off land on the basis of racial legislation after 1913. In March 2018 (when approximately 19,000 claims remained to be finalised) Treasury estimated that it would take 43 years before the backlog was cleared at a cost of R30 billion.⁹ Many complex and contested claims are unresolved and presentations by the DRDLR to the Presidential panel referred to R27 billion required for the remaining settlement of farm claims.¹⁰

⁵ Farmers Weekly, 20/2/2019

⁶ News 24, 22/02/2019.

⁷ The budget for human settlements over the next few years is scheduled to increase from about R34 billion in 2018/19 to R44 billion in 2021/22 and the Report argues for 'public private partnerships' and 'blended finance', which would enhance provision further.

⁸ PAP, p. 12

⁹ O. Willcox, 'Land Restitution Financing', National Treasury, 5 March 2018.

¹⁰ PAP, p. 33

The Land Commission is attempting to move faster. The DRDLR announced that in the 2018/19 financial year it would settle 1,151 land claims at a cost of R2 billion and prioritize post settlement support on restituted farms, to the value of R700 million.¹¹ Whether these ambitious new targets are attainable remains in doubt. The task of researching and settling claims under the legislation was underestimated from the start, and the Commission has not been able to develop and retain the internal expertise to meet the various requirements for finalising claims. Completing restitution remains an urgent priority, but there is no end in sight at present. Effective post-settlement support remains a major issue and the Treasury paper takes a pessimistic view: 'Numerous restitution projects are not productive, and some have even collapsed completely, which drastically reduces their impact on poverty alleviation and job creation'.

The issue has additional significance because of the Land Restitution Amendment Act (2014) which reopened the process. A further 160,000 claims were lodged by 2016 when the Constitutional Court struck down the Act and required revisions if it was to be reintroduced. Perhaps unaware of the scale of the problems, the Court also ordered that existing claims be settled in two years. The DRDLR failed to meet these deadlines and the Minister's application for an extension was rejected with costs on 19 March 2019 (Case CCT 40/15). The DRDLR was also ordered to provide updates on its progress to the Court every six months. This requirement may provide a clearer sense of progress.

The Constitutional Court has not rejected the validity of these new claims and in all probability they will eventually have to be processed. Many of them overlap with old order claims. Further delay in dealing with claims will deepen the insecurity in the countryside and the reluctance to invest in long term farming projects. But processing them - especially in a less than transparent and rigorous manner - is likely to enflame tensions in rural areas. Overlapping land claims and a growing demand for state recognition by multiple chiefdoms and kingdoms has sharpened ethnic identities and boundary disputes. Powerful mining and other economic interests are involved, hoping to gain favourable access to mineral resources. There are numerous simmering conflicts in rural areas and the violence and destruction of schools in Vuwani, Limpopo, provides one example of how they erupt. Particularly in the northern border regions of the country, ethnic disputes have merged with the stigmatisation of some groups as foreigners and threaten to stoke volatile disputes.

Concluding restitution will stretch budgets and research capacity. Treasury estimated in 2018 that it would take 200 years to conclude and it would cost approximately R600 billion to process and settle the 160,000 new order claims.¹² This may be an excessively gloomy projection - especially given that most of these claims are for cash compensation - but it gives a sense of how daunting and destabilising this issue could be.

The Advisory panel follows the High Level Panel report in urging that steps are taken to conclude restitution as soon as possible.¹³ We support this conclusion and endorse the recommendations that a specialised unit is set up within the Land Claims Commission, or working alongside it, with the skills and resources to rapidly identify and research claims; the Land Claims Court should be substantially strengthened. Better research and greater clarity in the Commission about the validity of the claims will diminish the need for court cases - an expensive and time-consuming process for all concerned. The Government has failed to take decisive action, compounding the destructive effects of unresolved restitution.

¹¹ Web South African Government, 'Land Reform'.

¹² O. Willcox, 'Land Restitution Financing', National Treasury, 5 March 2018.

¹³ Parliament of South Africa, Report of the High Level Panel on the Assessment of Key Legislation, November 2017

Land Reform and Production

The reports of the High Level Panel (2017) and Advisory Panel (2019) recognise that South Africa is at an important juncture in respect of land reform and agricultural production. Land reform has been pursued for 25 years by the ANC government and there have been significant land transfers. Precise figures on all the different dimensions of transfers are difficult to find and interpret. But government statistics show that about 8.5 million ha (roughly 10 per cent of the country's agricultural land) has been transferred through the state schemes of restitution (roughly 4 per cent) and redistribution (6 per cent). In addition about 4 per cent, and probably more, has been purchased on the market by black landowners; the PAP does not give a figure and we cannot find an adequate published source.

Each of these categories of land has different histories and potentialities. In addressing debates about the racial composition of landholding, the former homeland areas should be added - at about 14 per cent in 1994. Some of this land is densely settled but most could also be considered as agricultural land. It may be useful to consider that about 28-30 per cent of land is held in various forms of tenure by African people. In addition substantial areas of highly developed land are owned by publicly quoted companies, some now multi-nationals, in such sectors as sugar and forestry. Ownership in these cases is difficult to define racially. Although a significant area has been transferred in the dry zone of Namaqualand, much of this post-apartheid land transfer is in the wetter, eastern half of the country. Agricultural potential is not shaped by rainfall alone but it is a major factor both in livestock and crop production.

Both documents emphasise, in the words of the Treasury paper, that 'land reform must be oriented around growing the agricultural sector to foster economic development, and not purely be an endeavour to transfer land'. 'Most importantly', the Advisory panel notes, 'the success of land reform must be linked to South Africa's productive and sustainable use of land, and the vibrancy and competitiveness of the economy, open to all to participate and benefit at all levels'. But the Panel recognises only very briefly the scale and significance of commercial agriculture in the economy as a whole and in food supply. One section accepts that 'commercial agriculture presents a ...rosy picture in as far as food production and trade is concerned'.¹⁴ Strikingly high estimates are given in respect of the contribution of agriculture and related economic activities to GDP. The report as a whole fails to mention that the total value of commercial agricultural production for 2017-18, according to government figures, was R281 billion and it grew by more than four per cent over the previous year. Exports also grew substantially in 2018 to perhaps 10 per cent of all exports. The report notes an annual increase in the growth rate of agricultural production of 3.1 per cent over the last two decades but calls it 'modest'.¹⁵ Such figures, if correct, put South Africa among the faster growing agricultural economies and also exceed the overall growth rate in GDP since 1998.

Inadequate analysis of the dynamism of at least parts of the larger farm sector affects understanding of land reform as well as agriculture in South Africa. The large farm sector does not need subsidy but it would greatly benefit from more certainty; it can also provide a platform for a range of transfers. In a context where state funding and capacity is limited, private sector partnerships provide a way forward. It is possible to enhance opportunities for commercial agriculture at the same time as drawing on skills and capital for land reform. Organised large-scale agriculture was initially suspicious of land reform but has increasingly put its weight behind projects and schemes. Some of these are mentioned briefly in the panel's report but it has limited coverage of the promise of the public/private partnerships that have developed. By contrast, the Treasury

¹⁴ PAP, p. 84.

¹⁵ PAP, p. 5.

document is strongly in favour of such joint ventures and partnerships. A critical point just at the moment is surely to keep investment, capital and skills on the land and use these as the basis for a production-oriented land reform.

Partnerships in sugar, forestry, wool, dairy, beef, citrus, maize and tomatoes, amongst others, may have absorbed as many as 80,000 smaller black farmers over the last two decades – though they may not all be active simultaneously.¹⁶ The terms 'joint ventures' and 'partnerships' cover a wide range of relationships between established commercial producers, commodity organisations, the state and smallholders. To varying degrees they involve transfers of knowledge and skills in training and mentorships as well as inputs, access to infrastructure and routes to formal marketing. In some cases they also include transfers of land.

A few examples illustrate the range of enterprises. The South African Sugar Association sponsored the earliest and largest outgrower projects which reached about 50,000 African smallholders around the turn of the twenty-first century. Declines in subsidy and other factors have resulted in gradual contraction of the scheme since then.¹⁷ In the 2018/2019 season, there were 18 885 registered small-scale growers, of whom 12,076 delivered cane, producing over 12 per cent of the crop.¹⁸ Much of the production took place within the former homelands but there have also been projects on restituted and redistributed land.

The National Woolgrowers Association scheme, started in 1997, provided critical inputs for communal area sheep owners in the shape of improved wool-bearing rams on a mass scale – perhaps 50,000 in all so far.¹⁹ Shearing sheds have been built in some villages and the NWGA sustains twelve full time extension workers. The costs were shared between the Wool Trust (about 65 per cent) and state, with occasional donor money. Farmers could market their wool through the formal auction system and their income grew to R383 million in 2017-18. With about 25,000 participants, this is an average of R15,000 per owner but a substantial number earned over R50,000 a year. In this case, the project was aimed largely at improving flocks and wool production in existing communal areas, and the project has not directly involved the purchase of land for black sheep farmers – although livestock owners on transferred land can be included.

By contrast, the Grasslands Dairy Trust in the Eastern Cape involved the purchase and establishment of a worker-owned farm by a successful dairy company.²⁰ The original Trust incorporated 49 dairy workers who were 100 per cent owners and therefore in position to sell; the state subsidised 35 per cent of the original purchase through the Land Redistribution through Agricultural Development (LRAD) formula.²¹ Much of the rest of the funding came from loans mobilised by the dairy company, which were gradually paid off. In 2018, each trust member received R150,000 as a share of profits in addition to the wages that they receive on this farm or elsewhere. Efficient and large-scale production is needed to maintain profits on this scale as also a strong connection to the eleven farms in the dairy consortium as a whole and its marketing facilities.

¹⁶ Sugar outgrowers peaked at 50,000 early this century, but about 20,000 are now registered and 12,000 delivered cane in 2018; an estimated 25,000 have participated in wool schemes and 20,000 in forestry (SAPPI has over 4,000 outgrowers). Other commodities have fewer involved.

¹⁷ A. Dubb, 'The Rise and Decline of Small-Scale Sugarcane Production in South Africa: A Historical Perspective', *Journal of Agrarian Change* (2016), 16, 4, pp. 518–542.

¹⁸ South African Sugar Association Website.

¹⁹ Interviews W. Beinart with L. de Beer, July 2019; W. Beinart and L. Wotshela with Z. Mbatsha, July 2019

²⁰ Interview W. Beinart with T. Elliot and others, July 2019.

²¹ LRAD was the main funding formula for the redistribution scheme after 2001, designed to encourage agricultural production

Similar models have been adopted in beef production. The Sernick Emerging Farmers Programme in the Free State has incorporated 660 small-scale cattle farmers. In addition to loans from the land bank and support from the Jobs Fund, they have been able to mobilise private sector financial support. Using the value chains of the largescale Sernick beef operation, they have been able to pay back interest and invest in better quality livestock. As in some of the other programmes, the project involves training and mentoring. Sernick, as in the case of the NWGA, is ambitious to expand further and aims to train and assist tens of thousands over the next decade.²² In another venture, Eden Agri Services, started by a white commercial farmer in 2010 as a citrus pack house near Fort Beaufort, services both his own plantations as well as smaller scale black citrus farmers. The latter have become partners in the pack house.²³

All of these initiatives involve government agencies and finance. There is a danger that schemes are developed to access such funding and do not outlast it for long. The Estina dairy in the Free State was a case in point. However, a number have developed momentum. The question arises as to how long government subsidies should last and how long the state should support those who have done relatively well out of partnership schemes. Withdrawal of some or all state support has affected the sugar programme and may impact on the woolgrowers. The LRAD scheme, through which the Grasslands Dairy Trust initially acquired land, was discontinued by the Department.

Partnerships do not always work immediately. One interesting example is the Ravele community in Limpopo who won a restitution claim in 2005 over some valuable fruit and nut farms, where avocado, citrus, macadamia and bananas were already planted. They formed a Communal Property Association and decided not to reoccupy the farms. By this time the government was encouraging beneficiaries to maintain existing investments and production systems.²⁴ But their initial partnership arrangement went sour in 2008 and led to large losses which the CPA could ill-afford. Salvaged in part by government support, they then moved to employing a white farm manager; some CPA members were also workers. This initially worked well but was threatened in 2015 when the local traditional leader attempted to take over the CPA. Such tensions have been more widely reported.²⁵ By 2017-8 these problems had at least been temporarily resolved and the combination between an experienced manager, and a motivated workforce who were also owners, resulted in significant profits.

Some private sector and commodity organisation projects seem to be particularly effectively; the state at present does not have equivalent expertise. Nevertheless, government assistance is essential in finance, land acquisition and in leveraging capital, skills and equipment from the private sector. The wool scheme initially drew its extension officers from state service. In a context where marketing has largely been removed from the state sector, and the old purchasing boards dismantled, private sector partnerships can be particularly important in providing access to formal markets. This is surely government money well spent in that it has a productive outcome that can enhance the value of funding to poorer families. The Advisory Panel cautiously recognises such advantages and calls for more research. The Treasury view is far more enthusiastic about partnerships or joint ventures and encourages diversity in approach.

The establishment of a new Agricultural Development Agency that focusses on private sector financing for

²² Sernick Group, 'Sernick Emerging Farmers Programme supported by Jobs Fund at National Treasury - Information Sheet', 2019.

²³ Farmers Weekly, 6/19/2018.

²⁴ CPAs, established in legislation in 1996, were the main ownership vehicle through which land was transferred to communities, in both restitution and redistribution programmes. E, Lahiff, N, Davis. and T, Manenzhe. (2012) Joint ventures in agriculture: Lessons from land reform in South Africa International Institute for Environment and Development

²⁵ T. Cousins and D. Hornby, 'Leaping the Fissures: Bridging the Gap between Paper and Real Practice in Setting Up Common Property Institutions in Land Reform in South Africa', in Hornby, Kingwill, Royston and Cousins, Untitled: Securing Land Reform in Urban and Rural South Africa (Pietermaritzburg 2017).

agricultural partnership projects may provide a valuable further dynamic. Roelf Meyer announced at the South African Investment Conference in November 2019 that the Agency would invest R12.9 billion in 32 schemes. While this may not all be immediately available, it is a substantial amount compared with the current state budget for land reform. In these initiatives the emphasis is on projects and production rather than percentages of land transferred.

Smallholders and Redistribution

The Advisory panel report fails to deal adequately with the evidence that existing smallholder agriculture within the former homelands and on transferred land has probably not been expanding; in the last thirty years, production, especially of arable crops, has contracted. The report recognises that any assessment is hampered by the state's neglect in collecting statistics on smallholder landholding and production. This is a major gap and should be another priority for the Department.

The Advisory panel report accepts there is much underutilised land in the former homelands. And it recognises that there is massive unemployment in the rural areas. But both this and the Treasury document fail to ask central questions: why do smallholders not maximise use of their land and why do most unemployed younger members of households avoid putting their labour time into that land? There is not a simple answer but analysing this issue is surely vital before distributing more land to smallholders in communal tenure and expecting them to become agricultural producers. It is a multifaceted issue: many do not see the risk of agricultural investment worth taking; some do not have the resources to invest; younger people are often reluctant to undertake agricultural work either as a contribution to family labour or for low wages. They associate it with poverty.

The Advisory report states that 'More than 60 per cent of the active population of southern Africa depend on land for their livelihoods, whereas rural and urban poor communities depend almost entirely on land as a source of food'.²⁶ We will leave aside its veracity in relation to southern Africa as a whole. With reference to South Africa, for which no other numbers are given, this figure is profoundly misleading. Surveys of rural villages in the former homelands suggest that smallholders produce on average perhaps 20-25 per cent of food needs (perhaps more in relation to meat). It is difficult to arrive at any accurate figure because statistics are absent and there is great diversity between different areas and villages.²⁷ In dense settlements in and around the former homelands the percentage is lower. The evidence suggests that most rural African families are dependent on purchasing most of their food.

We may draw two conclusions. Firstly, the history of the rural areas, which for many years served as a base for migrant workers, and where people now depend heavily on social grants, suggests that we are unlikely to see a general resurrection of small-scale, self-subsistent, mixed peasant agriculture. Self-subsistent homesteads on communal land are also unlikely to be an effective model for production on transferred land. Secondly, there are huge opportunities for rurally based producers who can mobilise access to sufficient land and inputs for production. These figures also imply that there is a ready market for food in the villages and rural dense settlements. The former homelands have a population of perhaps 18 million, nearly a third of that for the entire country. Collectively, they buy most of their food and this market is potentially available for smallholders in the vicinity. Our view is that the state should prioritise engaging more effectively with the smallholders who can mobilise resources of land and inputs both in the former homelands and on transferred land. Far more

²⁶ PAP, p. 40.

²⁷ The government does produce estimates for 'non-commercial' maize production. These show that such smallholders contribute roughly 5 per cent of maize. The area cultivated has been declining over the last decade but the yield per hectare has been increasing. However, it is still about one-third of yields on commercial farms.

could be produced on such land and, with other development initiatives, including tourism, providing routes for accumulation in the poorest rural districts.

Intensification of livestock production is a priority, and the NWGA scheme has shown a way forward in a complex area for intervention. There are promising projects around goats, for example at the Mdukatshani Rural Development Project in the Weenen area, KwaZulu-Natal. Animal health is a key area for state support, and the veterinary service, which employs a large number of Animal Health Technicians, but is uneven in its reach, should remain a priority.²⁸

Village surveys indicate that while poorer families have largely abandoned their fields, a significant proportion still grow vegetables and green maize for consumption in smaller gardens adjacent to homesteads. Garden schemes have a chequered history in South Africa, with limited success, but this is a route to reach poorer rural women and for the state and NGOs to develop programmes around improved nutrition.

Evidence also suggests that about 5-10 per cent of perhaps 2 million African rural landholders do manage to market agricultural produce at times. Facilitating their production is a significant priority for the state and the extension services. Many of these small-scale farmers are oriented to selling into informal, local markets for livestock, green maize and vegetables, rather than the formal value chains that are important for some of the successful partnerships. Livestock are sold and consumed in large numbers through the local 'customary' economy, where animals are still regularly slaughtered for a wide range of ceremonies. However, produce also reaches some local supermarkets, or is distributed via the bakkie trade. Such small-scale markets are significant in the rural economy and on the smallholder irrigation projects that are functioning.²⁹ There is great scope for innovative development on the existing smallholder irrigation projects, perhaps 50 per cent of which are not operating effectively, including perhaps 30,000 ha of land.

The redistribution programme has in fact changed in recent years and the government no longer focusses on redistributing commercial farms to smallholders through CPAs. Nor does the state transfer ownership of land it purchases immediately, either to community or individual owners. Land purchased for land reform by the state is leased out. In the first phase of redistribution, the target was the 'poorest of the poor' through the medium of Trusts and CPAs. But transfers have increasingly been focussed on medium and larger-scale black farmers through LRAD and then the current policy of Proactive Land Acquisition Strategy (PLAS, launched 2006).³⁰ Beneficiaries can lease land for 30 years, with leases renewable for another 20 years, and have an option to purchase. The first five years of the initial lease are a probation period in which the performance of the lessee is assessed, and new lessees pay little rental in this period. In this way the Department has recognised that lack of finance is a central cause of failure for new occupants of farms. The Recapitalisation (RECAP) programme provides settlement support grants, but requires business plans and encourages private sector partners or mentors. The current models for redistribution are not addressed to assisting poorer landowners. That is an additional reason to focus on partnerships and joint ventures, which reach a wider range of beneficiaries and also provide training.

In regard to expanding employment in agriculture, again a major recommendation in both reports, effective

²⁸ W. Beinart and K. Brown, *African Local Knowledge: Livestock Disease and Treatments in South Africa* (Wits, Johannesburg, 2013).

²⁹ Adetola Akunlola et al. *Challenging the Stereotypes: Small-scale Black Farmers and Private Sector Support Programmes in South Africa*, a National Scan (PLAAS, University of Western Cape, 2016).

³⁰ PLAS is designed to finance the takeover of commercial farms by individuals or small groups of black beneficiaries in order to continue running them as commercial undertakings.

statistics are only kept for the commercial farming sector and the evidence suggests that employment in agriculture has declined over the last few decades. Village-based studies in the communal areas generally show a withdrawal of family labour from agriculture and, as yet, limited transition to wage labour. If agriculture is to create employment, these two longer term trends will have to be reversed. This largely depends on intensification of production, and also – as the Treasury document recommends – expansion of export-oriented agriculture. Successful enterprises with higher value products, especially where packing and processing is also involved, such as citrus, avocados, fruit, wine and berries do show a capacity to absorb workers. Associated enterprises such as accommodation and tourism also facilitate rural employment. In smallholder areas, partnership and outgrower schemes have been the most successful in reabsorbing both family and local rural workers. Reports suggest that some larger African livestock owners employ temporary workers, beyond the family, and this is also evident on irrigation schemes and amongst the relatively small percentage of those producing for the market. Agricultural employment is often at the lower end of the wage spectrum and much of it is seasonal. In the northern parts of the country, some of those in agricultural work are foreign workers from Zimbabwe and Mozambique.

The State and Land Reform

The Advisory report offers ambitious plans for new laws, and new administrative bodies. This includes a Land Reform Act, a Land Register Act, and amendments to various other Acts. It calls for a restructuring of the Department of Rural Development and Land Reform. All of these projects have admirable aims. But have the consequences been thought through? What will be the relationship between new and existing institutions? Does the state have the capacity to generate successful new bureaucracies, when existing departments are struggling? Who will fill the new posts, when capacity within the Department and Land Commission is already stretched and high turnover has been experienced both at a national and provincial level.

We advise caution here. The issue for land reform, as the report elsewhere recognises, is not a lack of legislative authority but a lack of capacity to implement. Surely the major strategy should be to enhance funding, training, capacity and motivation for the existing institutions dealing with land and agriculture. The veterinary and agricultural extension services are cases in point.

Expropriation without compensation will not solve these problems. The cost of land is not the major expense in land reform. A significant gap in the programme so far has been inadequate expenditure on support for agricultural production. When land reform involves new settlements, the costs of housebuilding and services have to be taken into account. New clusters of settlement must start with these, including a school – so that children will not be isolated from education, their best chance of escaping poverty. If the state appropriates land, it will still be left with a major burden of debt on the expropriated land; at present this is paid by sellers. A Valuer General has already been appointed to ensure that fair prices for land are paid. But one consequence is that farmers are much less inclined to settle claims out of court. Insofar as there is any clarity, state proposals in connection with expropriation seem thus far to be narrowly conceived, concentrating largely on urban and peri-urban land which is urgently needed for housing. A relatively small increase in budget would provide sufficient for land purchases that do not threaten investment into agriculture.

The question of tenure reflects the different opinions and interests in the Advisory Panel. For example, the Advisory report accepts the claims that chiefs should have some authority over customary land and some chiefs clearly made a strong case for such outcomes. But the report also illustrates in graphic detail the difficulties experienced by women in gaining access to land in the rural areas where land is held in customary tenure. Some women perceive chiefs or customary practices to be the problem. The report supports customary tenure but

envisages a gender free customary law. It illustrates that customary areas are subject to hierarchical political power, in which land plays an important role, but does not provide a route to resolve this problem.

Here too the central aim should be to strengthen existing legislation.³¹ The Interim Protection of Land Rights Act (IPILRA) of 1996 needs to be made permanent. A landmark judgement has recently been made on the basis of this Act in the Xolobeni mining case in the Eastern Cape.³² The judge accepted that the rights of a rural community to their land, protected by IPILRA, trumped the power of the state and a mining company to dispossess them without full and informed consent. This judgement needs to be generalised, by an amendment to IPILRA, in order to make the rights of families to the land they hold as strong as full ownership. IPILRA also requires backing by the Department with a special unit – again an example of implementing existing legislation effectively rather than ambitious new bureaucracies.

Land Tenure

The Advisory report suggests, but does not conclusively prioritise, that family and individual rights to land should be cemented for all of those who hold land rights in customary areas and informal settlements so that they are not dependent on intermediaries such as chiefs, shack landlords or communities for their access. It is very difficult to control the rent-seeking tendencies of intermediaries. We agree with the report's recommendations that the Ingonyama Trust, which controls the land in former KwaZulu in the name of the Zulu King, needs major revision. The Trust appears to be weakening customary land rights by gradually changing them to leases. If the government fails to confront this issue now, years of uncertainty lie ahead for existing African rural landholders. In this, as in many other areas, the ANC has to choose between short terms politics and long-term progress.

The Treasury document accepts the need for greater security of tenure, but shies away from private tenure; it mentions instead a community based system of registration. There is some evidence of such local initiatives but they are very uneven. It is depressing that so major a government document is hesitantly suggesting exploratory and untested 'in-between' approaches to a major national problem. The poorest people in the country need certainty about their landholding and their land is an important asset for them. The ANC government dispensed with the old PTO system of tenure in unregistered areas 25 years ago. They have not replaced it with anything coherent nor even piloted other possibilities, although the Upgrading of Land Tenure Rights Act (1991 and amendments), providing for private tenure, has been implemented in a few cities. Following court challenges, this Act in turn needs urgent amendment to ensure that women have full and equal rights to be registered as owners.

A Land Register Act is strongly advocated in the Advisory panel as a route to cementing land rights and facilitating land administration – now the fourth priority of land reform. This will have certain advantages for those whose land is unregistered. The proposal is to gradually extend the cadastral survey over the whole of the country, prioritising the urban areas. Simultaneously this will require recordal of landholding - a complex task that will need to recognise the rights of women and families as well as men. Landholding will be registered in a national system, giving strong, legally enforceable rights, but in this version this proposal will be another 'in-between' system that will not be equivalent to title; a new administration would be needed to implement and manage it. We are in support of this process as a long-term aim; with perhaps 6 million sites to be covered (to include customary, and informal, sites as well as RDP houses without titles) it is a major undertaking. The proposal at present is based entirely on the state, in particular the DRDLR, and it is very unlikely to be achieved without

³¹ W. Beinart, P. Delius and M. Hay, *Rights to Land: a Guide to Tenure Upgrading and Resitiation in South Africa* (Jacana, 2017).

³² Pretoria High Court, November 2018, *Baleni and Others v Minister of Mineral Resources and Others* (73768/2016) [2018]

major new resources. Pilots are essential on this front, and procedures developed to ensure that the process can be corruption-proof. It does not seem sensible to create a new bureaucracy to do this outside of the existing system overseen by the Deeds registry. This is an institution that still operates effectively at a national level and there are strong interests within the country, black and white, in support of it. Many people want the certainty of title to their land. Some people are selling sites or the improvements on sites. It is surely better to move, over the long term, through this process of recordal, to a single national system of landholding. A sequence of amendments to the Deeds Act of 1937, already permit a wide range of registered, titled landholding including sectional title and co-ownership by members of the same family. The constitutional court has protected those threatened with losing private property through debt in the Jaftha judgement (2004) on the grounds that the constitution protects the right to housing.

The Deeds Registry and Surveyor General office are absolutely critical in the future of land holding, administration, and land markets. It is a priority to ensure that these institutions are supported to ensure efficient, corruption-free administration. These are the core of the tenure system, working with professional bodies such as local administrators, surveyors and solicitors. They bring knowledge and oversight that cannot be provided by the DRDLR alone.

Secure rights to land, cemented at the level of the family or individual, for all existing landholders, as well as those on transferred land, are essential to protect those for whom land is an important asset. But the Advisory report also affirms that there is 'a direct correlation between security of tenure and agricultural production' and 'secure tenure is always a catalyst for intensifying agricultural production as well as natural resource management and sustainable development'.³³ Although the relationship between tenure and production is complex, we agree with this point and argue that the upgrading of tenure and a long term movement to enhanced, and private, rights through registration is the wisest route. Similarly, family and individual rights within Communal Property Associations that hold transferred land need to be protected.

Priorities

- Planning for increased urbanization must be a key element in SA's overall land policy. This should focus on expanding metros, cities and medium sized towns.
- Don't undermine successful commercial agriculture; work with it. Partnerships and incorporation of the private sector into agricultural land reform and projects – state finance essential to help to leverage this and should be offered on a consistent and where necessary long-term basis.
- Strengthening existing institutions, with improved training and funding them better so that they can implement land reform and a gradual transfer of land.
- Strengthening programmes such as the extension services and access to finance that will facilitate intensification on existing smallholdings.
- Strengthening tenure and movement towards a single national system of land holding.

³³ Advisory panel, p. 48

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