



CENTRE FOR
DEVELOPMENT
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A Short Note on Business and Land Reform

May 2018

In February 2018 Parliament passed a resolution that instructs the Constitutional Review Committee to review Section 25 of the constitution and other clauses where necessary and report back to the Assembly by 30 August 2018. Speaking in parliament, President Ramaphosa said:

- “As we implement this resolution to expropriate land without compensation, we should be clear on how we will not damage the economy and food security.”
- “There is a strong case to be made that the use of expropriation without compensation in certain circumstances to advance land reform is consistent with the provisions of the Constitution”.

The President has subsequently reiterated that land reform would “... unfold within a clear legal framework and would not affect economic growth.” He has repeatedly called on business leaders to be part of the dialogue on the process of finding a solution that is in the interests of the country as a whole.¹

CDE and business have history on the land reform issue

CDE’s work on land reform started with intense research in 2004, resulting in a major report for BLSA in 2005. This was followed by a presentation by CDE with the Big Business Working Group to President Mbeki and his cabinet. The research work and many engagements continued for the next three years, culminating in a second CDE report in 2008 and a major public campaign which led to a briefing for Joel Netshitenzhe, head of policy in the presidency, and then through him a briefing to all relevant DGs in agriculture, land, local government, transport, etc.

CDE was supported by the CEO of BLSA and many representative organisations in organised agriculture. We were in conversation with Thoko Didiza, the Minister of Agriculture and Land Affairs at the time, on the nature of a business/government partnership. **It is fair to say that all this work almost changed the conversation on the land issue before President Mbeki was deposed.**

This short summary note deals with the CDE/BLSA 2008 recommendations, briefly notes where we are 10 years later on land reform issues and summarizes the findings and recommendations of the High Level Panel report to Parliament. It concludes with a consideration of some strategic issues for business today.

¹ African News Agency, “Land reform will not affect economic growth: Ramaphosa”, *ENCA*, 8 March 2018. [Accessed 23 April 2018] <https://www.enca.com/money/land-reform-will-not-affect-economic-growth-ramaphosa-tells-moodys>

CDE and BLSA 2008 Proposals

In 2008 CDE argued that:

- “Land reform in SA is in trouble. Be warned: this is not just another policy issue in which government capacity is unequal to a difficult task. This is an issue that affects the very foundation of our 1994 constitutional compromise on property rights.”
- “For most South Africans, the history of land is one of pain and injustice. People must be fully compensated for land and assets that were stolen... the future of the land issue will affect the country’s ability to reach its economic growth targets, produce its own food and compete in global markets.”

CDE also pointed out:

- “Most land reform projects involving large numbers of people being resettled on newly acquired land have been abject failures – in the words of a senior official: ‘assets dying in the hands of the poor’. Many if not the majority of participants in land reform projects are not better off after receiving their new land. Current policy is not working for its intended beneficiaries.”
- “Attempts to improve security of tenure for black people in rural areas have made little if any progress – this applies to communal land areas as well as the rights of tenants on commercial land as well as the rights of beneficiaries of both the redistribution and restitution programmes.”
- “Many voluntary initiatives in the private sector have been aborted or put on hold because of the scale of restitution claims now gazetted on private land and delays (lasting years) in resolving them.”
- “Most rural South Africans do not want to become farmers, the vast majority want a secure place to stay. There are pockets of real land hunger in the country, these should be identified and the purpose for which land is needed established.”

The proposals in our 2008 report which found favour deep into government and beyond are still relevant today. These recommendations were “designed to ensure that justice is done, that land reform beneficiaries are made permanently better off, and that SA agriculture transforms and continues to attract investment, generates export earnings and provides a growing number of good jobs.” The proposals were built on the reality that the DLA at that time had a vacancy rate of 27% including many senior positions.

CDE, supported by BLSA, argued that SA needed a bold new approach to land issues and rural development.

First and foremost, we recommended establishing a talented, action-oriented partnership comprising senior leaders in government, the ruling party and the private sector, particularly agri-business. This Presidential Task Team should have its own budget and should report every six months to parliament on progress with respect to land issues. Its work should cover five areas (each of which is backed up with numerous specific actions on how to achieve these recommendations). The five areas in headline form were:

- *Completing restitution speedily*: The resolution of the restitution impasse is the first priority for successful land reform, because it lies at the root of so many other problems in virtually all regions of the country. Large agri-companies are offering assistance with creative plans to make speedy progress in generous settlements – they need willing and competent partners in the state.
- *Getting redistribution on the right track and to significant scale in rural and urban areas*: To do this we need an audit of state land and informed knowledge of the nature of demand for land (whether for settlement or farming; by whom and in which parts of the country). A partnership approach is needed to acquire land in a market supporting way (a new public private agency was proposed to buy land effectively) that meets the diverse needs of poorer people cost effectively and in the right parts of the country.
- *De-racialising commercial agriculture* through more agri-business support for redistribution and effective farming in each sector of the agricultural economy, BEE deals, and the establishment of villages for farm workers and their families. (Getting commercial agriculture back onto a sound footing will also require redesigning the land tenure laws affecting both commercial and communal land.)
- *Tackling rural poverty directly*: Establish a blue ribbon commission funded by the private sector and international donors to:
 - develop an economic and development strategy for rural ‘routes out of poverty’;
 - a dedicated education fund of R1 billion per annum of state money to provide expanded opportunities for rural learners to go to agricultural college, boarding schools of quality or study maths, science and language to enable them to become professionals.
- *Spending more on land reform and spending it better*: The Treasury has rightly been cautious in its allocations to the DLA and has had to retrieve unspent funds in the past. A bigger budget is essential for land reform but this can only happen if the kinds of partnerships we are proposing are established. The capacity to spend more money and do this effectively is just not available in the DLA alone.

CDE then concluded:

“Above all, we need to change the way we think and talk about land reform. SA needs to change the conversation about land. The country needs a new narrative that moves away from Zimbabwe-style terminology. SA must move towards concepts like cooperative relationships between state and markets, sustainable development, escaping rural poverty and expanding educational and economic opportunity to prepare rural South Africans for the 21st century.”

In 2008 therefore, CDE proposed: **“a formal public-private partnership to provide the leadership SA needs to show that we can resolve a difficult issue arising from our history and do it in such a way that everyone benefits from the process. The private sector is offering to help in redressing this historic wrong, this assistance should be formalised”**.

Land reform today

Since 2008 the situation has only worsened.

Land reform projects are not doing well, tracts of agricultural land under claim have expanded enormously – making it effectively “frozen” for years with negative impact on investment and employment. The state has resorted to owning land that has been expropriated and then leasing to claimants who are then unable to access capital. Tenure security for many different groups of poor vulnerable South Africans has got worse not better.

In this context government re-opened and expanded the land claims process. The Restitution of Land Rights Amendment Act 15 of 2014 provided for new land claims to be lodged for a further period of five years (1 July 2014 to 30 June 2019), but the act was challenged in the Constitutional Court, which, on 27 July 2016, declared the Amendment Act invalid. The Constitutional Court ruled that old claims must be finalised before new ones are processed, although later claims would still be valid. Parliament was given a two-year deadline to fix the amendment law.

We currently have a stalled legislative programme covering a number of controversial topics from establishing state ownership of all agricultural land (possibly other property rights too) to a bill expanding the state’s expropriation powers, and another that could limit the size of privately owned farms.

It is important to appreciate one dynamic at work in this complex mix of issues. At present leading experts argue that, at the current rate of finalising 560 claims a year, it would take at least 35 years to finalise the approximately 19,000 un-finalised ‘old order’ restitution claims. If the restitution process is re-opened - which could happen this year once certain amendments are made to the Restitution of Land Rights Amendment Act 15 of 2014 - it is expected 397,000 claims will be lodged. This effectively means that it could take 709 years to complete land restitution.

Throughout all this the budget for land reform has stayed very low bearing no relation to the demand; and capacity in the department has remained weak, and inadequate to the task. The annual amount in the SA budget for land reform has been less than 1% of GDP and nowhere matches the hundreds of billions of rands required to deal with all these claims.

In this context rhetoric and scapegoating has grown louder with general claims against white farmers, White Monopoly Capital and the policy of “willing buyer, willing seller” being blamed for the lack of progress.

And now the decision to review section 25 of the constitution and to allow/encourage expropriation without compensation even in a limited way creates new concerns about tenure security.

Parliamentary High Level Panel

The one ray of good news in this sobering tale concerns the report of the High Level Panel in 2017. This Panel was appointed by the speaker of parliament in December 2015, to assess the content and implementation of legislation passed since 1994 in relation to its effectiveness and possible unintended consequences. The Panel comprised 16 prominent South Africans and was chaired by former President Kgalema Motlanthe.

Their recommendations on land follow closely those of CDE's ten years earlier. These include:

- “Experts advise that the need to pay compensation has not been the most serious constraint on land reform in South Africa to date – other constraints, including increasing evidence of corruption by officials, the diversion of the land reform budget to elites, lack of political will, and lack of training and capacity, have proved more serious stumbling blocks to land reform”.
- “Rather than recommend that the Constitution be changed, the Panel recommends that government should use its expropriation powers more boldly, in ways that test the meaning of the compensation provisions in Section 25 (3), particularly in relation to land that is unutilised or underutilised”.
- “The poor outcomes and slow pace of restitution have been confirmed by numerous government reports. The public hearings testified to the divisions and disappointments restitution has sown on the ground. The Panel identifies lack of capacity, inadequate resources and failures of accountability as key constraints that must be urgently addressed”.
- “Those who do receive redistributed land are made tenants of the state, rather than owners of the land There are too many South Africans, in rural and urban areas, who have insecure tenure to the property that they occupy.”
- “The lack of well-situated land for urban settlement remains a stark legacy of apartheid planning and discrimination. Well-situated state-owned land needs to be made available for housing for the poor, and well-situated privately owned land targeted for expropriation”.
- “The Constitution provides for positive land rights in Sections 25(5), (6), (7) and (9). These are the rights to equitable access (redistribution), tenure security and restitution. These rights are not being adequately promoted, enforced and protected. Instead, they appear to be under attack from policies and practices that redirect the benefits of land reform to potential political alliances with specific elites”.
- “Current and proposed legislation on traditional leadership denies people living in areas under traditional leaders several constitutional rights, distinguishing them from those living in the rest of the country who enjoy the full benefits of post-apartheid citizenship”.
- “Parliament is encouraged to pass legislation within the constitutional framework that clarifies the status of both land and governance structures in order to provide certainty and avoid ongoing tension and contestation.”
- “Land reform policy [is] marked by signs of elite capture. Implementation has also been dysfunctional. To ensure that land reform delivers the land rights set out in the Constitution, the Panel recommends that Parliament enacts framework legislation that addresses the deficiencies of law and policy”.

Concluding remarks

The issue of land reform is more complex and challenging than the debate about Section 25 of the constitution. Land reform in any country is a difficult task involving large numbers of people and their aspirations, multiple challenges and considerable resources for effective implementation. South Africa is no exception and is struggling to make progress. The state alone does not have the capacity or knowhow to help SA change gear and put this issue on a positive trajectory. Land reform in SA will not be “solved” without private sector co-leadership, active involvement, knowhow and support.

In this complex situation with its mix of multiple and difficult issues, business leaders must confront some difficult questions. Business needs a long-term strategy on land issues. At this point, business leaders should consider:

- How to participate in the public debate on land reform, as well as the constitutional review process in the next few months.
- Should business again propose a presidential public/private partnership to lead on land reform and report back to parliament on a regular basis?
- Can business highlight current approaches that work and develop new proposals that could effectively link land reform to the fight against rural poverty?
- How the land reform debate can embrace urbanisation and the importance of urban land title and security of tenure, and the impact of rural land title and security on effective urbanisation?
- How business and other stakeholders could highlight the importance of urban and peri-urban land needs? And how best to move forward on this 'burning' issue.

Centre for Development and Enterprise

May 2018

APPENDIX 1: CDE Land Reform Publications

The Looming Land Restitution Crisis, 23 May 2018, [see here](#)

CDE, Business and Land Reform, 4 May 2018, [see here](#)

Land Reform in South Africa: Getting back on track, 7 May 2008

[Executive Summary](#)

[Abridged Report](#)

[Full Report](#)

Farmers' Voices: Practical perspectives on land reform and agricultural development, 7 February 2008, [see here](#)

Land Reform in South Africa: A 21st century perspective, 12 May 2005, [see here](#)

CDE Land Reform Op-eds

[Bungled land claims have created tinderboxes in SA's rural areas](#), 15 June 2018, *Business Day*

[Land Reform Plan Has Been Drawn-up- It Just Needs Willing Leaders](#), 24 April 2018, *Business Day*

[State Bungling Threatens to Turn Land Reform into a National Crisis](#), 25 May 2008, *Sunday Times*

[Land: The Real Obstacles](#), 7 May 2008, *The Witness*

[Why Land Reform is Stuck](#), 7 May 2008, *Mail & Guardian*

[Change Course on Land or Face Grave Consequences](#), 7 May 2008, *Business Day*

[Grim Harvest for SA Unless Problems are Met Urgently](#), 7 Feb 2008, *Business Day*

[Private Contribution to Land Reform Significant](#), 12 May 2005, (*Publication unspecified*)