



South African Institute of Race Relations

The power of ideas



Terence Corrigan, IRR Project Manager, during his visit to Britain, July 2018

**Notes for discussions in Britain on Expropriation without
Compensation, July 2018**

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Background

Land – or rather ‘the land’- has been central to South Africa’s political narratives and mythologies. Perhaps this is because it implies a bond of belonging between South Africa’s people – or perhaps ‘the people’, or South Africa’s ‘peoples’ – and the country that has been so contested. It is an economic resource, but so very much more.

Nationalist narratives have often romanticised and lionised their rural populations as the authentic and uncorrupted bearers of culture. The term ‘Boer’, for example, means ‘farmer’. Land politics and land reform tend to take on deeply political and emotional tones.

The history of land dispossession in South Africa is well known, if imperfectly understood. The advance of Boer and British political control shifted the ‘overlordship’ of the country’s land into the hands of governments whose primary responsibility was to their white populations. The Africa population, for the most part, were not regarded as a full part of the dominant society; land ownership and property rights were frequently not extended to them on the same basis as they were to white (and to some extent brown and, later, Indian) people.

The 1913 Natives Land Act reduced the possibility of African landholdings to 7% of the country, subsequently to 13% in 1936. As Sol Plaatje memorably wrote: ‘Awaking on Friday morning, June 20, 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth.’ For a population that was still heavily dependent on farming, this was at the very least a major choke on the prospects for mobility. For others, it signified a fairly rapid descent into penury.

The following decades – well into the 1980s – saw attempts to maintain territorial and spatial segregation. ‘Forced removals’ – estimated at some 3.5 million people – provided a handy illustration of the violence and callousness of Apartheid. Resolving the ‘land question’ remained a well-referenced political demand. In 1994, the manifesto of the African National Congress called for the redistribution of some 30% of South Africa’s agricultural land.

It’s important to keep all this in mind as the background context of current developments.

What is happening?

At the ruling party’s conference in December 2017, a resolution was passed mandating a new policy of Expropriation without Compensation (EWC). On 27 February 2018, Parliament adopted a motion to

investigate the introduction of a policy of EWC. The resolution was written in the idiom of land reform, invoking the painful history of land dispossession, and referred to the findings of the recently released Land Audit, claiming that black South Africans owned only 2% of rural land and 7% of urban land in South Africa. The motion required an examination of whether Section 25 of the Constitution (the 'property clause') was undermining land redistribution, as well as a future tenure system for South Africa. Note, there are two elements to this, although this is not always adequately recognised. (Compensation-free takings might be less important than a new system of landholdings...)

Since then, numerous figures in the government and ruling party have reiterated their commitment to this plan.

Justified as a means to expedite land reform, there is no immediate clarity as to what it will mean. A rider to the proposed policy was that it should not harm the economy, and should not disrupt agricultural production and in so doing threaten food security.

The Economic Freedom Fighters (which proposed the original parliamentary motion) are adamant that the constitutional protection of property must be amended if not abolished, and that all land should be held by the state.

Conflicting comments leave us no better informed as to government's intentions. A small sample of what has been gleaned from the media reveals that:

- EWC will turn South Africa into a 'Garden of Eden', according to Cyril Ramaphosa
- The policy will 'mainly' target unused land, according to an unnamed senior official in the ruling ANC, commenting on the concerns of investors and ratings agencies.
- 'When a person is greedy and takes every piece of land for himself, that person should be the first for expropriation because he doesn't need land,' according to Mineral Resources Minister Gwede Mantashe.
- EWC should be limited to specific circumstances: unused land, and land held for speculative purposes; abandoned landholdings; property owned by public entities that is 'under-utilised'; land farmed by tenant farmers with an absentee landlord, according to Deputy Minister of Public Works, Jeremy Cronin.
- 'Land must be given back to the rightful owners', according to Deputy President David Mabuza.

- ‘Municipalities and state-owned enterprises need to release unused land and service sites for housing so that our people must have houses, so that they also do not resort to self-help measures through the illegal occupation of land,’ according to President Cyril Ramaphosa.
- ‘We are going to take land and when we take land we are going to take it without compensation,’ according to President Ramaphosa.
- No productive land will be taken from farmers although inequalities must be addressed, according to Mike Mlengana, Director-General of the Department of Agriculture, Forestry and Fisheries

Depending on one’s interpretation, this suggests anything from minor appropriations around the edges of the economy, to substantial seizures, in some measure motivated by ideology.

President Ramaphosa’s economic advisor, Trudi Makhaye, has said that it is important to ‘be frank’ with investors about land reform. It is unlikely that – under existing circumstances – such frankness is possible.

State of land ownership

Since this measure has been framed as a land reform measure, it is necessary to understand the state of land ownership in South Africa. The background is – of course – the extensive dispossession of African (and more broadly, black) people historically. A well-recognised reference point is the limit of black landholdings to 13% of South Africa in terms of the Land Acts (by implication, placing 87% of the country’s land in the hands of white people).

It is questionable whether this ‘13%/87%’ accurately captured the true state of ownership even in 1994. The 87%, for example, referred to land that was part of the white-controlled Republic, and not to the proportion that was in the hands of individual white people: much was state-owned; and in parts of the country, fairly large tracts of land were owned by brown and Indian people; apartheid restrictions had in any event been crumbling since the 1970s. (In the late 1980s, a city councillor in Johannesburg threatened to prosecute estate agents selling properties in white areas to black people – a representative of the industry said he was welcome to try, but he’d need to hire a sports stadium to accommodate the accused.)

With the transition to democracy, it was unclear just what proportion of land should be seen as 'black' and what as 'white'. Certainly, it was not accurate to state – as some activists have persisted in doing – that the situation remains unchanged.

Two major recent studies have attempted to shed light on this. The more prominent, government's official *Land Audit* came to the following conclusions. (It must be noted that the numbers it cites are often inconsistent with one another – among many other grounds for concern – but the general picture is clear.)

It put the total area of South Africa at about 121,924,881 hectares. Of this, 7,701,605 ha or 7% is not registered at the deeds office – this tends to be in areas set aside for the African population, particularly in the Eastern Cape. Individuals, companies, and trusts own 94,725,825 ha or about 73% of the total. Individuals own 37,800,986 ha or 31% of the total; followed by trusts at 29,291,857 ha or 24%; companies at 23,199,904 or 19%; Community Based Organisations (CBOs) at 3,549,489 ha or 3%; and co-ownership at 883,589 ha or a little under 1%. State-owned or -controlled holdings (including unregistered land) amount to 27,199,056 ha, or some 22% of the country.

Less than a third of land in South Africa (37,800,986 hectares) is held by individuals as privately-owned freehold land, registered at the Deeds Office.

Of this amount, a large majority, 37,078,289 ha, is classified as 'farmland' (although not all of it is actually used for farming purposes). According to the report, Africans own 1,314,873 hectares (4%), coloured people 5,371,383 hectares (15%), Indians 2,031,790 hectares (5%) and whites 26,663,144 hectares (72%). Those classified as 'other' hold 1,271,562 hectares (3%) and co-ownership arrangements account for 425,537 hectares (1%).

Much has been made of these last figures. They have repeatedly been invoked to demonstrate the failings of land reform. No less a figure than the minister responsible for land reform and rural development has made the claim that Africans 'own only 4%' of land in South Africa. (The unspoken implication is that white people own 96%, representing an even more extreme situation than that which prevailed under the Land Acts.)

This is incorrect. It is important to note that during the colonial and apartheid eras, it was rare for Africans to own land under registered freehold arrangements. Since the advent of democracy, this has

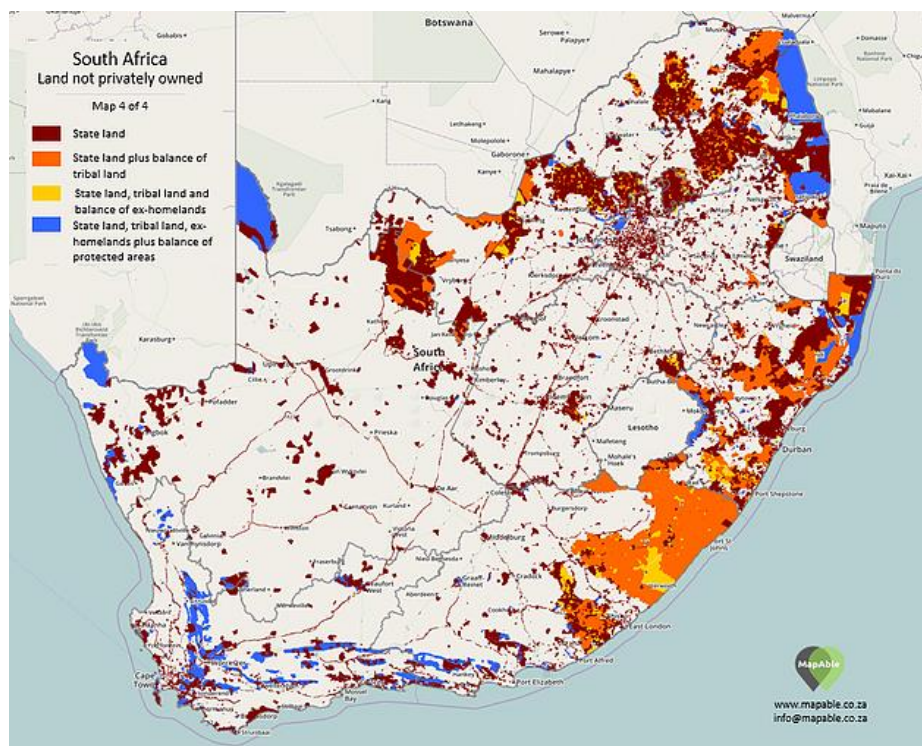
remained the case. African landholdings – or, perhaps more accurately, the land to which African people have ‘access’ – are far more extensive than the ‘4%’. But they are generally either not registered at the Deeds Office, or are registered as something other than private freehold property.

Indeed, by focusing only on private, registered freehold property, virtually the entirety of the ‘13%’ allocated to Africans by the Land Acts vanishes, as does virtually all of what was transferred through land reform initiatives since the 1990s. This land is invariably state-owned or registered to community property associations, trusts and companies.

There are nevertheless important questions hanging over these figures. Firstly, the Audit relied on highly sensitive census data in an effort to assign the limited racial classification it could. But it is known that the census has a non-response rate of close to 20%. Nowhere is this recorded or the methodology for overcoming it explained.

Another issue was highlighted by the private consultancy, Mapable. In a series of maps that attracted a great deal of attention, it argued that landholdings under state control in one way or another (directly owned, ‘tribal lands’, protected areas etc) amounted to far more than the 23% claimed by government.

The map below illustrates this.

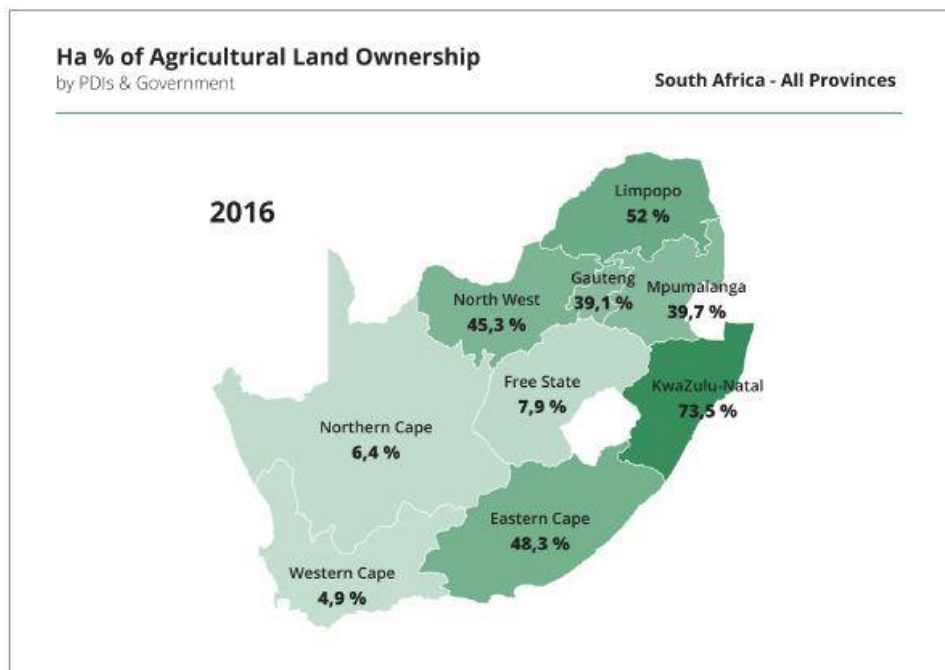


Source: Mapable

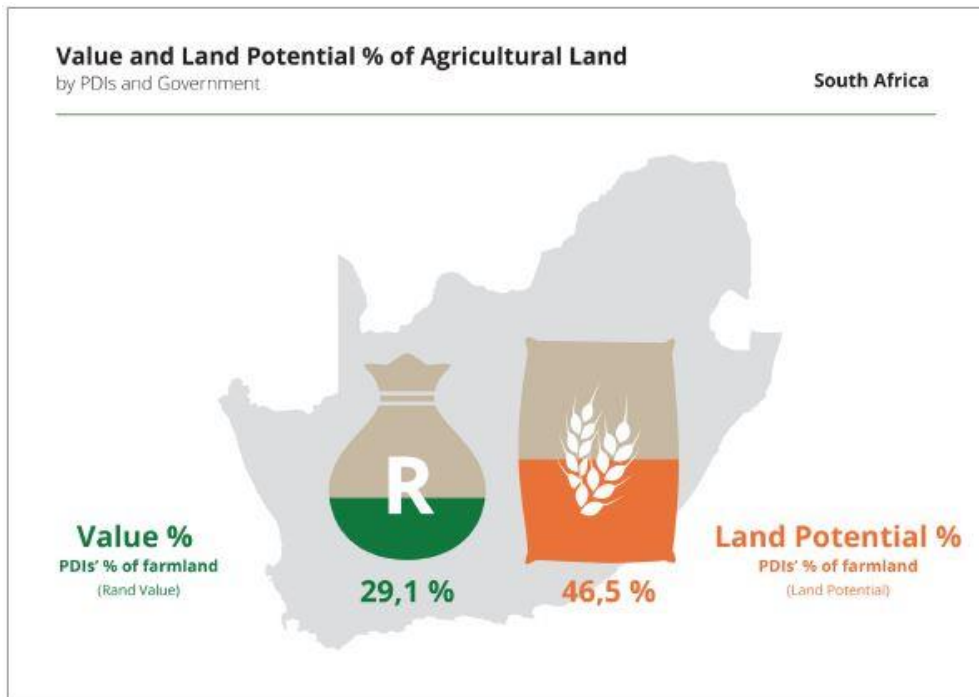
Another issue of interest is the truism that not all land is created equal. In this respect, the other land audit (conducted by the agricultural industry group, Agri-SA, and focussing on agricultural land) is important. While criticism can certainly be levelled at it – it combines state-owned land and land held by previously disadvantaged people (thus brown and Indian people as well as Africans) – it has the virtue of attempting to determine the value and productivity potential of different types of land.

This is important, since a third of South Africa is in the arid and sparsely populated Northern Cape. The government has shown little interest in land reform here, choosing – understandably – to focus on the better-watered and more fertile east of the country. Ernest Pringle, a prominent farming expert, has demonstrated previously that ‘in the high rainfall eastern areas of the country, the average carrying capacity is 1:4, whereas in the arid western areas the average is 1:16. This means that one hectare of land in the former region can produce the same as four hectares in the latter, and the value of the land should therefore be four times higher.’

Thus, the Agri-SA analysis paints a much more positive and equitable picture of land-holding in South Africa



Source: Agri-SA



Source: Agri SA

In sum, can we say who owns what in South Africa? Not with a great deal of certainty. There has certainly been movement, but whether this comes close to the 30% target (which has become something of a symbolic reference point) is hard to say. There is no official requirement to list race in property transactions or on title deeds, and a growing proportion of land is in any event held by entities not individuals. And it's not clear how one should regard, say, land owned by a company that was historically white-owned, but now has significant black shareholding. Moreover, it's clear that the state remains a key land owner.

Finally, the differential potential of land in different parts of the country raises some important questions as to whether the fixation on ownership percentages is not perhaps a misguided metric for measuring success.

What is the state of land reform in South Africa?

It is common cause that land reform has 'failed'. I tend to take a more nuanced position. It is certainly in a malaise, but it has not been without its successes, depending on how one defines them.

Land reform in South Africa is typically defined as having three components:

- Land restitution, involving the return of landholdings lost to discriminatory laws, and to which people or communities can show an historical claim.

- Land redistribution, involving acquiring land and providing it to aspirant farmers.
- Tenure reform, intended to provide a more secure basis for life on landholdings (for example, for farmworkers on commercial farms).

Transfers of land – with which this debate is primarily concerned – have certainly not proceeded as rapidly as government planners envisaged, but they have not been insignificant. Land ‘restored’ through both restitution and redistribution amounts to some 8,1 million hectares (6,6% of the extent of SA). Roughly 3.1 million ha have been transferred through restitution claims, and a further 5 million hectares of agricultural land have been acquired and transferred by government since 1994 through its land redistribution programme. (In addition, financial compensation paid out in lieu of land restitution could have acquired another two million hectares or so).

It is also important to note that increasingly – since around 2007 – government has changed its trajectory from granting ownership to new farmers to retaining redistributed holdings as state property. Under this approach, only the very wealthy recipients will ever qualify to make an offer to buy their properties – and then only after 50 years.

However, major problems have emerged in making these projects work. This is a highly contested area. The former minister of Land Affairs and Rural Development, Mr Gugile Nkwinti, once memorably said that 90% of land reform projects had failed. He was criticised for this (it was termed a ‘thumbsuck’), but it does point to the problem of widespread failure of land reform projects to remain productive and to provide their beneficiaries with a route to prosperity.

The reasons for these failures are many and varied, and have been canvassed extensively – not least by government itself. They include:

- Inappropriate project design
- Lack of post-settlement support
- Insufficient budgets
- Administrative incapacity and confusion.

The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, commissioned by Parliament and chaired by former president Kgalema Motlanthe, commented: '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.'

Indeed, a detailed 2016 report on the land reform process by the Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape commented on much the same thing – among a great many other issues. It said: 'Lack of capacity in government departments such as land reform and agriculture (the latter at provincial level in addition to national) has hampered the implementation of land reform. Many officials have little first-hand experience of the realities they are attempting to change or support, and often have prior professional training that is not relevant to the work they do. Extension services in rural South Africa have long been in disarray.'

Research in the Eastern Cape by Prof Ruth Hall (associated with PLAAS) and Prof Thembela Kepe provided a salutary glimpse into how land redistribution was playing itself out. The lack of secure tenure was a glaring reality – most 'beneficiaries' were not even in possession of leases, let alone title (although they were under the impression that they would one day become owners). Thus, they were unable to access other forms of support, or to make improvements to their holdings. Large vested interests were able to benefit from this, coming on board as 'strategic partners'. Professors Hall and Kepe termed this – in words that resonate with South Africans today – elite capture.

Budgets have never been adequate to fund an extensive programme. This year the budget of the Department of Rural Development and Land Reform is some R10.4 billion. This amounts to less than 1% of government's total budgeted spending. The budget for land reform – the acquisition of land for redistribution – comes in at R2.7 billion. Restitution – settling land claims – is budgeted at R3.7 billion. (In each case, this includes administration costs, and not just the amounts dedicated to actual land transfers.) VIP protection and associated services (such as the SAAF 21 Squadron), by contrast, can expect to cost a total of R2.6 billion. In other words, protecting the country's political elite is seen as pretty much on a par with providing land to emerging farmers, and not much less important than addressing cases of land dispossession.

Respected agricultural economist the late Dr Hans Binswanger-Mkhize described the disjunction between land allocation and farming support thus: 'The problem is that the resources for on-farm

investments, inputs and other support are allocated to beneficiaries in a process that is separate from the purchase or allocation of land. Separate application and approval processes are a heavy burden on beneficiaries and civil servants alike, which adds to the capacity problems. Investments and inputs are often delayed by months or years.'

Against this background, it came as little surprise last year when the In Transformation Initiative, a Non-Governmental Organisation, reported that government was in possession of more than 4 000 farms that it had failed to pass on to beneficiaries.

Together, they constitute a potent toxic brew.

What seems clear, though, is that the payment of compensation has not posed a defining challenge to land reform. The problem is larger and more complicated. One might add that the rapid acquisition of more land could cause more problems than it resolves, given the inability of the programme to manage it.

Where to from here...?

A consultation process is underway. Hundreds of thousands of submissions have been sent to the relevant committee. How this will play out is unclear. Given that the ANC and EFF together command more than two thirds of parliamentary seats, very little could be done to oppose – at least through parliamentary channels – a course of action that they support, including a constitutional amendment.

Pointers as to the possible future direction are evident.

- Over the past ten years, there have been more than two dozen distinct attempts to introduce or alter laws or policies to abridge property rights – not all of them limited to land. The goal has invariably been to expand the footprint and discretion of the state in the economy.
- Land is a sensitive wedge issue. Given the historical injustices in South Africa, it is a matter that evokes intense emotions. The question arises as to whether this debate is really about land and land reform.
- Interestingly, land – certainly not in the agricultural sense – does not feature prominently as a concern for ordinary South Africans. Our polling suggests that perhaps 1% to 2% regard it as

something that could improve their lives. This is consistent with the findings of Afrobarometer.

- Section 25 of the Constitution is not merely about land – it is about property. A major move on land could set a precedent that could be applied elsewhere.
- In fact, a potential precedent already exists. The key concept here is ‘Custodianship’. It is the idea that the State can take over many of the functions and rights of ownership without legally doing so (therefore, not technically expropriation). Already the case in respect of mineral rights, endorsed by the Constitutional Court – *Agri SA vs Minister for Minerals and Energy, 2013* – it has repeatedly arisen in policy discussions, has featured in proposed legislation and was recommended by Land Audit Report. It could be the vehicle to effectively place all land under state control, but it would not necessarily require a constitutional change.
- On the other hand, recently, there has been some renewed focus on ownership, notably a pledge to provide title to people living in untitled properties in urban areas. This would represent something of a break with current practice.

Taken as a whole, there is clear cause for concern. This has only been amplified in recent days by the growing furore around the future of land held under the custodianship of traditional leaders, particularly the veiled threat of violence by the Zulu monarch should his holdings – under the Ingonyama Trust – be touched. The pledge made by government that no moves would be made on property held by traditional leaders points to confusion and ad hoc policy making.

More seriously, it raises some profound questions about the extent to which land policy is really being carried out with the goal of development, poverty alleviation and inclusion in mind. It should be remembered that one of the most enduring legacies of the colonial and apartheid past was the denial of property rights to African people – the relegation of their hold over their assets to something falling short of proper legal title. This remains distressingly the case today.

Meanwhile, despite earlier assurances that EWC will not impact negatively on the economy or on food security, despite vague assurances from some that it would not be wielded against land in productive use, senior KwaZulu-Natal ANC member Sihle Zikalala declared that it would in fact target commercial land.

The trajectory they describe is one that will do little to resolve South Africa’s deep socio-economic malaise. Rather, it will deepen it. Nor do these developments offer anything transformative for the

economy, for people's opportunities or for the building of a free, inclusive society. They detract from it. They mirror the past more closely than they describe an inspiring future.

Perhaps, more than anything, this the tragedy of EWC.