

THE ANC'S LAND REFORM POLICY: AN UNSUSTAINABLE & UNSATISFACTORY COMPROMISE

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1 Introduction

'Tensions [in South Africa] continue, and conflicting interests and ideologies lead to more or less unsatisfactory compromises.'¹

Against the backdrop of these words by Frank Welsh in his seminal work on the history of South Africa, the debate surrounding land reform will be critically examined. The African National Congress (ANC) released its 'Land Reform Policy Discussion Document' (hereinafter referred to as the Policy Document) in June 2012.² The Policy Document outlines the ruling party's policy on the transformation of South Africa's land ownership, stating that: '[l]and reform must represent a radical and rapid break from the past without significantly disrupting agricultural production and food security.'³

This article aims to take a critical look at the rhetoric and policy proposals which surround the debate on land. Furthermore, the nature and effect of the proposed redress will be examined. Through an understanding of green economics and environmentalism, the effect of economic opportunity, and a critique of the ideological defects of the proposals, this article will seek to provide a sustainable solution in contrast to the constantly unsatisfactory compromises that saturate South African public discourse around these issues.

2 The ANC's land reform policy

2.1 Radical means to achieve redress

Following the South African War, the abrogation of black land ownership became an integral part of government policy.⁴ The British authorities in the Boer Republics set about restoring land rights to

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¹ F Welsh *A history of South Africa* (2000) xxix.

² African National Congress 'Land reform policy discussion document' (June 2012) http://www.anc.org.za/docs/pol/2012/landpolicyproposals_june2012v.pdf (accessed 07 July 2012).

³ Land reform policy discussion document (n 2 above) 2.

⁴ R Ross *A concise history of South Africa* (2008) 95.

white farmers, but the court prevented the Crown from disallowing successful black sharecroppers the right to purchase land. In 1905, the Supreme Court in the Transvaal acknowledged the right of 'natives' to register land. However, the Natives Land Act 27 of 1913 signalled the final sequestration of black land rights in pre-apartheid South Africa. This Act allowed for the regulation of land distribution between black and white South Africans by expressly limiting the ownership of South Africa's land by blacks to 7% (increased to 13% in 1936).⁵

Transformation, as the ANC indicates, must take place in light of this history of systematic land dispossession by colonial and white minority authorities. The ruling party plans to achieve this transformation and redress through what it calls a 'radical' policy, which is broadly linked to redistribution of land and expropriation where necessary.⁶ This more aggressive approach to land reform seeks to solve the problem of slow transformation, which the ANC believes is as a result of the failure of the current market-based system – the so-called *willing-buyer, willing-seller* approach.⁷

Following the transition to democracy, the government has advocated a land redistribution policy which operates within the constraints of the market. In other words, the state does not provide the landless with land, but instead assists people who want to purchase land.⁸ The state has done this through the creation of the Settlement or Land Acquisition Grant (SLAG) and the Land Redistribution for Agricultural Development Grant (LRAD).⁹ The SLAG (which operated between 1995 and 2000)¹⁰ provided R16 000 to each qualifying household for the purpose of securing tenure or purchasing land. Similarly, the LRAD provides between R20 000 and R100 000 to black South Africans to cover expenses such as land acquisition, land improvements, agricultural infrastructure investments, capital assets, short-term agricultural inputs and lease options. The LRAD specifically seeks to extend agricultural property ownership to black citizens.¹¹

⁵ Ross (n 4 above) 96.

⁶ Land reform policy discussion document (n 2 above) 2.

⁷ Land reform policy discussion document (n 2 above) 7.

⁸ E Lahiff & S Rugege 'A critical assessment of land redistribution policy in light of the *Grootboom* judgment' (2002) 6 *Law, Democracy & Development* 297.

⁹ Department of Rural Development & Land Reform 'Grants and services of the land reform programme' (Version 7) (16 July 2001) 1.

¹⁰ Although SLAG is a policy which predates 2000, the 'Grants and services of the land reform programme' (Version 7) (n 9 above) indicates that the Department of Rural Development & Land Reform still process this grant. Furthermore, 'Land reform policy discussion document' (n 3 above), states that the SLAG is a grant which is currently unavailable. This indicates uncertainty as to whether citizens can still apply for it.

¹¹ Grants and services of the land reform programme (n 9 above) 3-4.

In terms of both the LRAD and SLAG, persons who qualify for the said grant must find a *willing seller* who is willing to sell their property to a *willing buyer*. These grants are indicative of the minimal government intervention which takes place currently in terms of securing access to land. To qualify for the LRAD, the beneficiary must make a contribution which is proportional to the size of the grant provided (the minimum being R5 000, and the maximum R400 000, with which a R100 000 grant can be obtained).

Home, in his examination of a pro-poor land law in Africa, indicates that most Sub-Saharan African states cannot afford the cost of purchasing land from current landowners.¹² When applied to the South African context it could be said that the beneficiaries of existing government redistribution efforts, in terms of the Provision of Land and Assistance Act,¹³ cannot afford the cost of purchasing land. Therefore, the current market-based approach to redistributing land suffers from two defects. First, monetary worth; the relatively limited size of the SLAG reduced the ability of a single buyer to access land. Second, monetary buy-in; for black South Africans to benefit from the LRAD grant they must contribute at least R5 000.

These common problems will be tackled by the ANC through a body which would regulate and value the cost of land. Essentially, the government will make interventions into the property market whereby the newly-created office of the Valuer-General will be empowered to create guidelines for the valuation of land and introduce standards with regards to just and equitable compensation.¹⁴ One can infer from this intervention that it aims to deal with the unaffordability of land. Furthermore, to counter the failed mechanisms of the past, the ANC introduces a new mechanism of redistribution of land based on two interlinking ideas: expropriation and economic rationale.¹⁵

The Constitution, in section 25(2), outlines the framework in which expropriation can take place.¹⁶ Restricting the state's power in such cases to expropriation for a public purpose or if it is in the public interest; the ANC sees this as an enabling clause from which they can expropriate land 'where necessary'.¹⁷ The Policy Document is, however, silent on the procedural aspects of expropriation.

¹² R Home 'Towards a pro-poor land law in Sub-Saharan Africa' in R Home (ed) *Essays in African land law* (2011) 25.

¹³ Act 126 of 1993.

¹⁴ Land reform policy discussion document (n 2 above) 7.

¹⁵ Land reform policy discussion document (n 2 above) 7.

¹⁶ The Constitution of the Republic of South Africa, 1996.

¹⁷ Land reform policy discussion document (n 2 above) 7.

2.1 Economic rationale and a pro-poor policy?

Home indicates that pro-poor land law consists of four elements, of which only one is relevant here: a more equitable land distribution policy. He opines that such a policy must aim to ensure that the landless have access to land, and also that such a reform of the *status quo* would distribute land from owners of large estates to those who currently occupy the land, or those who remain landless.¹⁸ The Policy Document seeks to achieve this through the regulation of land valuation with expropriation as a last resort. However, Home's analysis of a pro-poor land policy diverges from that of the ANC's in terms of economic rationale.

Home states that, 'Land is essentially for shelter and for getting a living.'¹⁹ He further observes that the Policy Document makes mention of the two-tier system that was historically developed in South Africa to ensure that black farmers remain subsistence farmers whilst white farmers engage in commercial farming.²⁰ The Policy Document also touches on the need to ensure that black entrants into the land market are not trapped by this two-tier system. In this regards, it states:

Model black commercial farmers must be consciously created and supported by our plans and programmes. Model middle-level farmers who may graduate into commercial farmers must be recognised as such and supported.²¹

The ANC places an emphasis on commercial farming and the need to ensure that small black farmers can graduate as commercial farmers, thereby ensuring food security and job creation. This serves as the economic rationale which guides the ANC's policy on redistribution, and by extension expropriation too. Essentially, the Policy Document states that it aims to redress dispossession, but effectively duplicates white commercial farming and agribusiness – thereby duplicating the effects of such agribusiness. In as much as the ANC's proposal aims to break from the past, it effectively aspires to expand the *status quo* by promoting commercial farming interests – which by their very nature do not create equitable access to land.²²

By replicating the existing system, the ANC's Policy Document and its reliance on economic rationale may act as a barrier which prevents the government from meeting its constitutional obligation to implement a land redistribution policy.²³ In *Grootboom* it was

¹⁸ Home (n 12 above) 59.

¹⁹ Home (n 12 above) 25.

²⁰ Home (n 12 above) 41.

²¹ Land reform policy document (n 2 above) 17.

²² J Porritt *Seeing green* (1984) 181.

²³ *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 42.

emphasised that the poorest and most vulnerable people in society should benefit from the application of section 25(5) of the Constitution, which requires government to create equitable access to land.²⁴ However, any policy which places commercial agriculture at the centre of land redistribution does not aim to serve the needs of the poor. Following Home's analysis, the ANC fails to create a policy which is pro-poor simply because it will likely lead to the creation of larger land estates, as is required by commercial farming.²⁵ Therefore, the key words that ought to describe any pro-poor land law or policy, and that are missing in this instance are: 'equitable access.'

The ruling party's pursuit of land reform has not *suddenly* taken a turn towards being irreconcilable with section 25(5). The Policy Document is a continuation of a post-SLAG period whereby the government has made it more difficult for ordinary South Africans to access land grants. To access LRAD, a citizen must contribute R5 000 to receive the minimum grant of R20 000. This qualifier is indicative of the inaccessibility of this redistribution policy. Lahiff and Rugege state that '[the LRAD grant] is unlikely to meet the range of needs for land experienced by citizens of South Africa, especially the very poor'.²⁶ They suggest that it is more likely to play an important role in the development of the agricultural sector, thereby speaking to the ANC's pursuit of economic rationale above a pro-poor approach to land reform.

3 Commercial agriculture: the politics of economic & environmental destruction

3.1 Agribusiness as a stumbling block to poverty alleviation

Commercial farming has come to dominate government policy the world over, with most states placing a priority on the development of this type of agriculture. Hatherill indicates that commercial farming is defined by its use of intensive farming techniques and the prevalence of high-chemical input.²⁷ Porritt takes this definition of chemical-based farming further by looking at its nature as a capital-intensive, mechanised form of agriculture that is inherently bound to fossil fuels. He calls this 'factory farming', whereby agriculture is no longer just a necessary biological activity, but an industrial exercise in efficiency.²⁸ In other words, agriculture has turned into

²⁴ *Grootboom* (n 23 above) para 36.

²⁵ Porritt (n 22 above) 103.

²⁶ Lahiff & Rugege (n 8 above) 314.

²⁷ JR Hatherill 'Commercial agriculture: facts and figures' *Vegsource* (<http://www.vegsource.com/articles/chemical.farming.htm> (accessed 21 July 2012)).

²⁸ Porritt (n 22 above) 103.

agribusiness; the system aims to search for the best possible economic outcome – more efficiency, higher productivity, and cheaper food.²⁹

By placing commercial agriculture at the centre of its land reform policy, the ANC will not create the necessary conditions to ensure that landless South Africans can utilise the land for their own benefit – to provide them with shelter, ensure food security and the creation of economic opportunity. Khumbane notes that it is due to the fact that many South Africans have no land that they cannot ensure food security in their rural communities – places where indigenous knowledge and traditional farming methods worked for centuries.³⁰ In essence, agribusiness represents the replacement of indigenous knowledge and autonomy by modern commercial techniques, and the implementation of a land policy which promotes the centralisation of wealth and decision-making power in fewer hands.³¹

In light of this, two questions must be asked to ascertain whether commercial farming will be more beneficial than the decentralised, organic methods of the past:

- (1) Does agribusiness create economic opportunities which outweigh the possible benefits of a pro-poor land redistribution policy?; and
- (2) Is this system more efficient than any other possible agricultural method?

To answer the first question, we must look at the cost and economic benefits of an expanded agribusiness industry in South Africa. The Policy Document states that focusing on commercial farming will allow for the creation of employment in the agriculture industry, however it is well-documented that factory farming is exactly *that* – it is the mechanisation and factory-like industrialisation of the process. Instead of creating the promised jobs, it will likely create unemployment or less employment amongst farm workers.³² Instead of promoting the creation of economic opportunity through expanded job creation in rural areas, the outcome of this policy proves to be anti-poor given its limited capacity to extend benefits to the jobless, landless and poor.

This current system, due to its high production objective and mechanisation, is also plagued by high resource costs. The cost of importing fertilisers and feedstuffs, purchasing petrol, pesticides, chemicals and the increase in packaging and machinery expenses make commercial farming a capital-intensive and expensive venture.³³ This further undermines the extension of economic

²⁹ Porritt (n 22 above) 102.

³⁰ T Khumbane 'Food security: traditional knowledge and permaculture' (2004) 2 *SA Rural Development Quarterly* 44.

³¹ Porritt (n 22 above) 104.

³² Porritt (n 22 above) 103.

³³ Porritt (n 22 above) 103.

opportunity, as high costs make it more difficult for new actors to enter the market and maintain a presence in a market where the average commercial farm's output is directly linked to its overall consumption of fossil fuels. Considering the increase in oil prices, advocates of commercial farming cannot deny that as oil prices soar, so too will the cost of farming and food. These facts relate to both of the above questions; agribusiness must be sustainable enough to ensure that the price of food is stable and inexpensive, and the system must also be the most efficient one available to farmers.

The dependence factor which exists in commercial farming, whereby farmers rely on expensive resources and spend large amounts of capital on related costs is indicative of the unsustainability of the system. As fossil fuels become less readily available, food prices increase. This speaks to question two – the system is unsustainable and inefficient. Saul, in his attack on the 'unreason' which exists in the so-called *age of reason*, writes that even though organic farming has now become marginally cheaper than mainstream commercial farming, the scientific and business communities have developed a devotion to modernity – not *actual* efficiency.³⁴

If agribusiness cannot create economic opportunity for South Africa's poor through expanded employment, and cannot provide the country with food that is priced at stable, inexpensive amounts, then it cannot contribute to the alleviation of poverty. If one were to ignore the constitutional provision in section 25(5) and only look at commercial farming within the scope of its possible economic benefit, then it would still fall short of being a reasonable policy worth pursuing. In that case, commercial farming should be irrelevant both in terms of forming part of an expanded pro-poor land redistribution policy, or creating economic opportunity for the poor.

3.2 The constitutional right to food

Drawing on from the inability of the Policy Document to address the constitutional responsibilities in terms of equitable land redistribution, or to deliver on its own basic precondition of economic rationale, one must also examine the connected socio-economic rights which flow from the implementation of any land and/or agriculture policy. Section 27(1)(b) of the Constitution states that 'everyone has the right to have access to sufficient food and water'. To have access to land allows one the possibility to access agricultural production. Equally, Mapulanga-Hulston notes that the right to food extends to the right to access the means of production of food,

³⁴ JR Saul *Voltaire's bastards* (1992) 314.

speaking to the need for communities and individuals to be able to farm their own food.³⁵ She further states:

The right to food ... comprises three major elements. Firstly, the types of foodstuffs commonly available should be culturally acceptable ... Secondly, the overall supply should cover overall nutritional needs in terms of quantity and quality. Lastly, the food supply should be safe and of good quality.

These elements come into conflict with the system of commercial farming, simply because agribusiness relies on chemicals in the farming process. Pesticides, animal hormones, fertilisers, fungicides and other chemical interventions in agriculture reduce the ability of the farmed products to satisfy the needs of the last two elements of the right to food. Commercial agriculture reduces the safety and nutritional quality of any farmed products. The effects of chronic exposure to pesticides, for example, include: reproductive and birth defects, the production of tumours, genetic changes, and blood, nerve and endocrine disorders.³⁶

The promotion of commercial farming evidenced in the Policy Document directly impinges on the right to access sufficient food because of the manner in which it centralises the control of land wealth in the hands of the few, and due to the continued application of chemicals to ensure higher productivity. By utilising methods which pose a threat to the health of consumers, agribusiness denies the consumer (especially landless South Africans that must purchase their food) the right to access safe, healthy and nutritious food.

3.3 Unsustainability of commercial farming

Commercial farming has proven to have a negative impact on the creation of economic opportunity and the health of consumers, and indelibly linked to these factors is the ecological and environmental effects of this system. As already indicated, the high-resource nature of agribusiness and its dependence on fossil fuels points to the unsustainability of the system – economically and environmentally. Furthermore, commercial agriculture naturally leads to the destruction of the countryside, and this destruction extends to the depletion of soil quality.³⁷ As agriculture places nature and biology at the centre of its activities, surely the protection of the environment must serve as a key aspect of any agricultural process. However, commercial farming is focused on the business of producing food, and not the process of sustainably producing food.

³⁵ JK Mapulanga-Hulston 'Adopting a human rights approach to food policy in an era of global financial crisis' (2009) 25 *South African Journal on Human Rights* 306.

³⁶ ES Lorenz 'Potential health effects of pesticides' (2009) *Penn State University* <http://pubs.cas.psu.edu/freepubs/pdfs/uo198.pdf> (accessed 21 July 2012).

³⁷ Porritt (n 22 above) 103.

4 Sustainable development as a solution

To address the economic and environmental unsustainability of the ANC's land redistribution to date one needs to recognise that the Policy Document fails to radically break from the past. The only policy that can lead to sustainable change is one which directly aims to reduce the inefficacy and economic negatives of commercial farming; introduce conservation of resources; and directly involve the knowledge and skills of the landless and poor

Brundtland suggests seven core objectives for development policies that follow from the concept of sustainable development:³⁸

- (1) Reviving growth;
- (2) Changing the quality of growth;
- (3) Meeting essential needs for job, food, energy, water, and sanitation;
- (4) Ensuring a sustainable level of population;
- (5) Conserving and enhancing the resource base;
- (6) Re-orientating technology and managing risk; and
- (7) Merging environment and economics in decision making.

The state can develop a policy which meets its constitutional obligations, as outlined above, and essentially places emphasis on ensuring that South Africans can access the essential needs for jobs, food, water and sanitation through the equitable allocation of land. The pursuit of economic opportunity *for all* should be placed above the irrational pursuit of unsustainable agribusiness, which does not reasonably serve the needs of the poor and landless. Furthermore, Adams, in his work on 'green development' in the developing world, opines that any such sustainable development needs to devolve power to the poor.³⁹ He says that it is 'an attempt to redirect change to maintain or enhance the power of the poor to survive without hindrance and to direct their own lives.'⁴⁰

This belief in devolution and enhancement of the individual's or community's power is in direct conflict with the Policy Document, which promotes a top-down land redistribution policy. The ANC's land redistribution policy is an attempt to control the outcome and nature of any land redistribution using the economic rationale of commercial farming as the basic precondition to any such outcome (a precondition that is irrelevant, as it is not economically viable).

With devolution the communities of Sekhukhune, Tzaneen, Bushbuckridge and Venda can decide to utilise their indigenous agricultural knowledge and skills to pursue an outcome that *they*

³⁸ H Brundtland *Our common future* (1987) 65.

³⁹ WM Adams *Green development* (1990) 383.

⁴⁰ Adams (n 39 above) 383.

choose.⁴¹ Or they can use their land for other economic pursuits; they need not be bound by the strict conditions set out by a government which is out of touch with their individual circumstances. Furthermore, the use of the land will likely change; there will be a move away from using the land to serve the needs of a distant consumer market. The land may be used for local needs, and will serve to empower the community through the possible creation of localised economic opportunity. In terms of food production, this is known as *permaculture*. Permaculture aims to produce more energy than it consumes, and is therefore sustainable.⁴² Porritt highlights the expansive nature of permaculture:

Food production should be encouraged at every level of society, not just on farms, but on smallholdings, city farms, in allotments, back gardens – even window-boxes. Small-scale, labour-intensive methods are by far the most efficient way of growing food.⁴³

The government can ensure redress by devolving power to the landless and poor. By pursuing a pro-poor land reform policy and enabling citizens to dictate how they utilise their new land, or the land which they already own, the state can inculcate a culture of sustainable development. In encouraging permaculture, organic farming, or the use of indigenous knowledge, the state ensures that citizens pursue paths which could provide them with positive economic outcomes. The encouragement of sustainable development as a guiding principle in policy development should take place, as it aims to deal directly with the socio-economic issues which plague South African society. Furthermore, the core objectives of sustainable development are in line with the government's socio-economic responsibilities – as entrenched in the Constitution.

5 Conclusion

Following democracy, South Africa has pursued several paths towards realising the right enshrined in section 25(5) of the Constitution. However, these paths (post-SLAG) have failed to ensure that the majority of the poor, landless, and vulnerable members of our society can access the economic opportunity and food security that land provides.

The ANC's *Land Reform Policy Discussion Document* will undoubtedly result in economically and environmentally unsustainable and unsatisfactory outcomes. It is a compromise between achieving equitable redistribution of land and redress, and the conflicting interests of the market. This is a market which places

⁴¹ Khumbane (n 30 above) 46.

⁴² Porritt (n 22 above) 180.

⁴³ Porritt (n 22 above) 180.

primacy on the furtherance of commercial farming as an efficient method of food production, but fails to recognise the irrationality and economic unviability of the system. The Policy Document is unable to deliver upon its promises of economic growth, and replicates the current system of white-owned commercial farms – this time with black farmers. This centralisation of wealth and power in the hands of the few cannot be seen as redress.

The government should prioritise sustainable development as a tool to achieve redress, alleviate poverty and fulfil its constitutional responsibilities. By recognising the importance, efficiency and opportunities that sustainable development as a set of values creates, the state will have to introduce a land redistribution policy that is in line with both these values and the Constitution. In sum, South Africa will have to undergo an ambitious programme to ensure equitable access to land, and must ensure that the state does not again enforce unreasonable preconditions (such as those found within LRAD) which act as barriers to accessing land and exercising localised power.