

PLAAS Working Paper**Unravelling the 'willing buyer, willing seller' question**

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If there is one thing regarding land reform in South Africa about which there is near-universal agreement, it is that the 'willing buyer, willing seller' (WB/WS) approach is problematic. At the 2005 Land Summit, for instance, the commission which addressed redistribution reported a 'consensus on rejection of willing buyer, willing seller (except Agri SA)', while the overall report noted, 'The overwhelming majority of participants in the Summit rejected the notion that the land reform process should be based solely on the notion of willing seller-willing buyer.'¹ Ten years on, these remain fair assessments of prevailing sentiments on the matter.

The rejection of WB/WS is largely based on two overlapping but distinct concerns. First, people allege that WB/WS is mainly responsible for the slow pace of land reform. And second, WB/WS is the ugly face of the 'property clause' of the 1996 Constitution, which some critics argue protects largely white landowners at the expense of the disenfranchised and thus also helps explain the slow pace of land reform.

In the light of this apparent consensus, Fred Hendricks poses an astute question: 'Why then does the government persist with this palpably inappropriate policy, given the widespread recognition that it does not work?'² The current impasse seems all the more odd given that, complementing the 'widespread recognition' that WB/WS is the main problem with the pace of land reform, there is a shared conviction that there are superior alternatives. These have remained more or less the same for some years, and have been repeatedly touted by senior government leaders: namely expropriation, land tax and the application of 'just and equitable compensation'. Some critics of WB/WS, of course, go further, suggesting constitutional amendments to the property clause or endorsement of Zimbabwe-style land invasions.

My argument in this chapter is that, firstly, critiques of WB/WS present little evidence of its unfeasibility or impracticality. Rather, they posit its undesirability on moral grounds, and use this to justify their condemnation that WB/WS 'does not work'. I establish this through selected excerpts

from public statements and academic articles. Secondly, as I illustrate with a brief case study of how the government is presently making gestures to replace WB/WS with 'just and equitable compensation', the government is largely preoccupied with symbolically suggestive measures that are impotent in practical terms. Thirdly, I attempt to show how radical critics of WB/WS have their own revealing symbolic preoccupations, namely the wholesale shifting of responsibility onto white farmers to 'pay for' South Africa's lamentable history of land dispossession. Fourthly, I argue that in terms of being an effective vehicle for effecting land reform, WB/WS is indeed flawed, but in a particular way, which must be well understood in order to chart a more promising way forward. I conclude with some reflections on the current impasse.

The 'consensus'

In a piece written for the National Land Summit that took place in July 2005, the general secretary of the South African Communist Party (SACP), Blade Nzimande, wrote:

The principle on which our land reform is based – 'Willing buyer, willing seller' – [is] the key reason for the slow pace of land reform. As the SACP we wish to argue that a market based land reform programme in conditions where such land was forcibly taken away from the majority through brutal and often violent colonial and apartheid dispossession cannot work and has proven to be a failure in many other countries with similar histories.³

While it would be unfair to expect a brief input such as this to back up its assertions with evidence, it is interesting that a semblance of evidence is in fact offered in the form of an oblique reference to Zimbabwe and Namibia, which are the only countries with 'similar histories' that also attempted WB/WS. I will return below to the lessons to be drawn from these other experiences. For now, I note that what is also interesting about Nzimande's view is that the failure of WB/WS is at least in part regarded as a function of the brutal and violent manner in which people were dispossessed of their land. More prominently, what is being claimed is not that WB/WS is an ineffective vehicle for transferring land (back) to black people, but that it is morally inappropriate given the circumstances. It is probably no coincidence that the title of the SACP submission was 'In memory of Nelson Chisale: SACP input to the National Land Summit'. In early 2005 Nelson Chisale was brutally murdered by his former employer, a white farmer, and one of the latter's employees, who threw Chisale into a lion enclosure.

By linking its Land Summit submission to the highly publicised case, the SACP was foregrounding the idea that land reform is about redressing the sins of the past, and that its implementation modalities should be judged in that light, whether in respect of redistribution or restitution. The quote from Nzimande is typical of the pattern. Below is a sample of other statements, by Ntsebeza, Ntsholo, Andrew and Mnxgitama respectively, that present similar juxtapositions of practical inefficacy, on the one hand, and moral incorrectness, on the other:

the overall context of land dispossession and land reform in this country should not be forgotten. The claims that dispossessed and poor South Africans are laying are legitimate. At the same time, there is no doubt that the market-led approach to land reform, including the protection of property rights in the Constitution and the 'willing buyer, willing seller' approach to land reform, will not unravel years of colonial and apartheid dispossession. There is a need to open up debate and discussion on these matters. The starting point in that debate should be whether a comprehensive land redistribution programme in South Africa can take place if it ignores colonial conquest, land dispossession and the fact that commercial farming triumphed as a result of the naked exploitation of African labour.⁴

The over-reliance of the [land reform] programme on market forces ... creates another layer of challenges in that it allows the markets a pivotal role in redressing the historical injustices of land dispossession. This market-reliance phenomenon is paradoxical because the beneficiaries of land reform were once, directly or indirectly, the victims of the very market forces that will now be determining their future through the land reform programme.⁵

[Land] restitution operates within the highly controversial market framework of purchase and sale of land, while existing measures for expropriation, even with compensation, are avoided. The state's dual political discourse on land directed towards its different social constituencies is indeed difficult to reconcile: the government is caught in the quandary of trying to apologize for the massive land deprivation and displacement wrought by its apartheid predecessors without seeking to really uproot the land ownership system those settler colonial regimes established.⁶

Contrast [Zimbabwe's fast-track land reform] ... with South Africa where about 50,000 white families and trusts own more than 80 percent of the land. The ANC government guided by Mandela's policy of reconciliation without justice has in the past 20 years managed to buy

back a pitiful 8 percent of the land from ‘willing farmers’ ... The ANC’s ‘willing buyer, willing seller’ policy essentially legitimises land dispossessions, unlike the Zimbabwean example where there was a sunset clause for such an arrangement. In SA it is self-imposed and protected by the constitution.

At the same time white farmers not only control the agricultural sector in SA but the very agricultural regime is racist, anti-black and environmentally harmful.

The cost of reconciliation without justice is seen even in how white farmers are allowed to poison the nation for profits [through GMOs].⁷

My point is not that the concerns about the practical efficacy of WB/WS are wrong (although I argue that some of them are); it is, rather, that they are generally presented as self-evident, using the language of hurt, blame and outrage. In its most concrete form, the moral outrage relates to the idea expressed by Andile Mngxitama (and others) that the Constitution unjustly protects the illegitimate property rights of whites, and therefore the idea of using a market mechanism for shifting land back is wrong; moreover, it simply doesn’t work. However, even for those who don’t share Mngxitama’s perspective, the market mechanism is suspect.

What is really going on? On the one hand, WB/WS is dismissed with little evidence brought to bear. On the other hand, there are numerous other explanations for the poor pace of land reform, but none inspires nearly the same kind of disgust and wrath that WB/WS does.

Implementing ‘just and equitable’ compensation

The idea of ‘just and equitable compensation’ refers back, of course, to section 25(3) of the Constitution, which stipulates, ‘The amount of the compensation and the time and manner of payment [for an expropriated property] must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances.’⁸ Although some of these relevant circumstances are noted – such as the history of acquisition or the past receipt of subsidies from the state – the clause is deliberately open-ended.

For many, the ‘vagueness’ of the clause is a source of frustration, although not necessarily as great as the property clause itself, that is the extent to which the clause protects existing owners at the expense of land reform. Be that as it may, for many others the Constitution’s property clause opens

space to consider alternatives to market value in determining compensation, in a manner that could favour land reform. In her first year as Minister of Agriculture and Land Affairs (in 2000), Thoko Didiza said to the National Council of Provinces (NCOP):

I think all of us as public representatives will have to come to a determination of what is just and equitable. This will call for sensitivity and understanding from those who are current occupiers of that land. If we deal with this situation, we will go a long way in fast-tracking the pace of the restitution process. I heard the Hon. Conroy say that at the pace at which we are working ... it will take us 20 years to complete the process. I do not think that is really a goal we should set ourselves.⁹

In other words, just and equitable compensation should be below prevailing market value, meaning that the existing budget will go further, which will result in a much faster land restitution process. Not long thereafter, Didiza indicated to the NCOP that the application of just and equitable compensation would do much to accelerate land reform generally.¹⁰

Fast-forward over a decade. At a media briefing in March 2012, the Minister of Rural Development and Land Reform, Gugile Nkwinti, stated, 'It is government's view that the willing buyer-willing seller has frustrated efforts to fast-track land reform, distorted the market, made land price negotiations excruciatingly prolonged and increasingly making land reform financially untenable for the state.'¹¹ Similarly, in his 2013 State of the Nation address, President Zuma announced, 'Government will now pursue the "just and equitable" principle for compensation, as set out in the Constitution instead of the "willing buyer, willing seller" principle, which forces the state to pay more for land than the actual value.'¹²

The difference is that Nkwinti's department began to take tangible action to implement just and equitable compensation, principally by drafting the Property Valuation Bill, which aimed 'to facilitate land reform through the regulation of the valuation of property' and to 'provide for the establishment of the Office of the Valuer-General'. The explanatory memorandum accompanying the Bill of November 2013 stated: 'A critical issue in land reform is that of escalating land prices. Escalating land prices have contributed significantly to the slow pace of land redistribution. This has in turn raised questions about the efficacy of the entire market-based land reform process.'¹³ The development of the Bill was not a simple or frivolous undertaking. It was anticipated by the Green Paper on Land Reform of mid-2011, and considered at length in a policy analysis produced by the

Department of Rural Development and Land Reform (DRDLR), dated October 2012 and entitled 'A Policy Framework for Land Acquisition and Land Valuation in a Land Reform Context and for the Establishment of the Office of the Valuer-General'. Among other things, it reasserted that high land prices impede land reform, that they are high because they are based on market value, and that this is problematic in that the 'reliance on transaction prices as the basis of valuation leads to the significant result that factors not intrinsic to the land's productivity exert a huge influence on its market value',¹⁴ such as local conditions of demand and supply.

However, in contrast to the deluge of messages to the effect that this is a new approach, one has to remark on the stark silence about the key parameters of the approach. If the primary advantage from the perspective of delivery is to make land cheaper, thus stretching the land reform budget, one important question is, how much cheaper? Consider a simplistic thought experiment. Suppose the government applied the principle of just and equitable compensation in such a manner as to reduce the expense of buying a hectare of land for land reform by 10 per cent; in effect, then, a given budget will be able to acquire 11 per cent more hectares than otherwise. But if the effective price per hectare is reduced by, say, 50 per cent, then 100 per cent more hectares can be afforded. And if effective prices are cut by 80 per cent, the 'purchasing power' of a given budget increases by 500 per cent. These differences are so vast as to be of enormous policy significance, especially if one of the main stated objectives of introducing just and equitable compensation is to accelerate land reform. However, there is not even the vaguest indication in the extensive 'Policy Framework', or in any public statement of government leaders, of how the government intends to apply just and equitable compensation.

More perplexing perhaps is that the greater the departure from market value, the more the government will have to rely on expropriation. The simple fact is that the government is a small player in the land market, and so it has little or no monopsony power. In other words, if the government were to offer sellers below-market prices in accordance with its just and equitable formula, most sellers would simply decline and prefer to accept a better offer from elsewhere. If the government wishes to dictate prices, it needs to do so in conjunction with expropriation. But there is little inkling in the 'Policy Framework' that this is the case. Moreover, recent drafts of the new Expropriation Bill suggest an approach that places less emphasis on creating the potential for decisive effectiveness than on respecting 'Constitutional principles of just administrative action'.¹⁵ Decisive effectiveness is limited, unfortunately, by the Constitutional provision which mandates the involvement of a court when the parties to an expropriation cannot come to agreement. The search

for just administrative action, on the other hand, is manifest in the draft Bill's provisions for a variety of mandatory 'pre-expropriation processes' such as various types of investigations, the serving of 'notices of intention to expropriate' followed by 'notices to expropriate', while also ensuring the 'verification of unregistered rights and consequences of expropriation of unregistered rights'.

Even without these embellishments, expropriation is a time- and skills-intensive process that would not be easily implemented on a significant scale, the more so as the DRDLR seeks to drive just and equitable compensation below market value. In effect the DRDLR has a choice. It can apply just and equitable compensation in such a manner as to pursue only modest cost savings, in which case it will accelerate land reform at best modestly, and possibly not at all, depending on the extra administrative burden of both performing expropriations and dealing with court challenges. Alternatively, it can seek more substantial cost savings, which would likely transmute into a relatively small number of conspicuous and racially divisive court cases, which, once again, would accomplish relatively little in accelerating the delivery of land reform. Another question surrounding the application of just and equitable expropriation is how the courts will rule in situations where the owner targeted for expropriation is not the original white owner or the owner who benefited from state subsidies. That between 1994 and 2008 about 63 per cent of all privately owned commercial farmland changed hands through the market (my own estimate, based on analysis of deeds transactions data) suggests that the application of just and equitable compensation might turn out to be very limited indeed.

Why place such great hopes in a policy innovation which, on the face of it, has little chance of making a positive difference? The mystery deepens when one considers the approach taken, namely to create the Office of the Valuer-General. While having such an office may help, it is far from necessary. Much has already been accomplished over the past few years by the Restitution Commission, through the efforts of a few determined and clever bureaucrats who have raised the calibre of bargaining skills, exposed valuations produced by service providers to careful scrutiny, and even reported some service providers to the Council of Valuers for malpractice.¹⁶ The value of the Office of the Valuer-General appears to be mainly the message it conveys to voters, that the government is getting serious.

To try to understand what the DRDLR is doing, it is also worth taking cognisance of other recent policy developments. I mention two, namely the Agricultural Landholding Policy Framework (ALPF)¹⁷ and the State Land Lease and Disposal Policy (SLLDP).¹⁸ Both have already been formally adopted by

the Minister of Rural Development and Land Reform as the official policy of the DRDLR (if not yet by the Cabinet), even while operational systems and legislative and regulatory tools may still have to be developed. Briefly, the ALPF proposes to control minimum and maximum landholding sizes, which will be determined on a district basis, and calls for interventions in local value chains. Meanwhile, the SLLDP establishes the terms and conditions under which state land will be leased out for land reform purposes, including state land acquired through land redistribution.

Both of these policies imply a dramatic increase in state responsibility. The SLLDP obliges the state to play the role of landlord, under the assumption of accelerating land reform. Meanwhile, the ALPF requires the state to ensure the establishment of 'district agricultural land use zones', 'agricultural landholdings development plans', and 'district beneficiary selection committees', while 'the Department and government in general' will take 'the necessary legislative and other measures to ensure that ... farmers become more efficient, more profitable, more competitive, and more sustainable at provincial, national and international levels of their respective value chains'.¹⁹ How precisely 'the Department and government in general' will do this remains unclear.

What the ALPF and the SLLDP have in common with the new attempt to institutionalise the just and equitable compensation approach is a vision of a powerful developmental state which can deftly substitute for or manipulate market mechanisms where it sees fit, and thereby mould reality to its technical preferences. It is abjectly unrealistic. There is mounting evidence that already the DRDLR has been a highly negligent landlord to its redistribution lessees,²⁰ despite their very small numbers. There is also evidence that the DRDLR has limited ability to design rural economic enterprises,²¹ never mind re-engineer local agricultural economies. And there is certainly little evidence to suggest that the government has the will to face up to the kind of white landowner resistance that it will encounter if it tries to pay below-market prices.

The tendency to propose policies which have no chance of successful implementation is a sign that the real underlying purpose of current policy development is largely symbolic and possibly also propagandistic. This is not to say that it is unimportant. Even if the DRDLR's obsession with finding a way of applying just and equitable compensation results in little discernible improvement in the pace of land reform, something will have been accomplished, namely a symbolic victory over white landowners. When, sooner or later, it becomes clear that this does not equate to a victory for the pace of land reform, the likelihood is that recalcitrant white farmers will be blamed.

‘Land redress redresses the totality of dispossession’

Broadly speaking, he and I shared an attitude towards South Africa and our continued presence there. Our attitude was that, to put it briefly, our presence was legal but illegitimate. We had an abstract right to be there, a birthright, but the basis of that right was fraudulent. Our presence was grounded in a crime, namely colonial conquest, perpetuated by apartheid.²²

Land reform – or the lack of it – is solid ground on which to mull over ‘white shame’. Even when white culpability and guilt are not the focus of discussion, they are often present as significant contextual factors, as in the Nzimande contribution to the Land Summit, or in Fred Hendricks’s use of the quotation above from a recent novel by J.M. Coetzee.

The idea of white guilt has a great deal to do, subtly but powerfully, with why people find WB/WS such an offensive approach for pursuing redistributive land reform. What I wish to do in this section is to explore how and why this is so. The fact of dispossession by and for whites is not the issue; it is rarely disputed except by those on the right-wing fringe, and it is certainly not in dispute here. Rather, the point of disagreement – generally not so much analysed as asserted – is who in contemporary South Africa, if anyone, bears responsibility, what the moral nature of this responsibility is, and what this in turn implies for appropriate forms of contemporary justice.

Consider the following three excerpts from Andrew, Ntsebeza and Hendricks:

[Land restitution’s] market-level financial compensations reinforce the socio-economic position of white landowners already dominant in the rural economy, many of whom paid little or nothing for land generations ago.²³

While colonialism and apartheid systematically undermined African agriculture, white farmers, on the other hand, benefited from substantial state subsidies. At the time of writing, there were about 50,000 white commercial farmers in South Africa, with varying degrees of concentration of landholding. These are the major beneficiaries of past apartheid policies and their continued control of the vast expanse of South African arable land lies at the heart of the enduring African exclusion and deprivation.²⁴

Walker ... asserts that '[a]s a social category white commercial farmers can hardly be regarded en masse as the major beneficiaries of apartheid in early 2000'. The trouble with this analysis is that it seeks to separate the current situation from its historical origins and in doing so it portrays a revisionist perspective on the history of land dispossession. Its effect is to provide a justification for the status quo. After all, if white farmers did not benefit, then who did?²⁵

Each of these passages expresses the point that land dispossession benefited white commercial farmers, and that the current dominance of large-scale white commercial farmers is the legacy of that process. However, beyond this there are subtle but important differences. Perhaps unconsciously, Nancy Andrew suggests that contemporary white farmers are in effect the same people as those who 'paid little or nothing for land generations ago'. Because they are descendants? Perhaps this is a 'sins of the father' concept of moral or legal responsibility.

In a more sophisticated formulation, Lungisile Ntsebeza implies that contemporary white farmers bear responsibility for the current problem of inequitable landholding in that they are the beneficiaries of past dispossession; because they are in possession of stolen goods, their current situation is morally untenable, even if they are not personally responsible for the theft. They therefore do not deserve the state's protection, especially as it comes at the expense of land reform.

The quote from Fred Hendricks raises still another dimension, albeit in the negative. In asking the rhetorical question 'if white farmers did not benefit, then who did?', Hendricks is inviting us to ponder the very history which he seems to understand so selectively. The question Walker was raising was not whether contemporary white farmers benefited from land dispossession, but whether they are the only or even the main beneficiaries. A few pages later, Hendricks writes, conventionally, 'the widespread dispossession of indigenous land was necessary for the supply of labour to white farms, mines and emerging capitalist factories',²⁶ which is another way of saying that, indeed, the benefits of land dispossession went well beyond past generations of white commercial farmers, never mind the 35,000 white commercial farmers who remain today.

Taking history seriously suggests that the white beneficiaries of land dispossession go far, far beyond current commercial farmers. At the turn of the twentieth century, half of all white South Africans lived in rural areas, whereas in 2011 only 8 per cent did so.²⁷ In 1911 agriculture, forestry and fisheries accounted for about 22 per cent of GDP,²⁸ whereas in 2012 it was about 2 per cent.²⁹

Between 1950 and 2007, the number of white commercial farms dropped by two-thirds, that is, from 117,000 to less than 40,000.³⁰ In 2010 commercial farms had a combined market value of about R300 billion (my own estimate, based on deeds transaction data), which is about 6 per cent of the estimated value of total private real estate for that year of R4.9 trillion.³¹

Demographically and economically, white South Africa has changed dramatically over the past two centuries. Whether in terms of DNA or rand value, the 'benefits that whites derived from land dispossession' are broadly diffused through South Africa's white population. Firstly, because in truth a numerical majority of urban white South Africans are the descendants or relatives of rural white families, most of which were either farm-owners or in some way served white farmers. (A simple way of explaining this is that, compared with the counterfactual situation in which the rural white and urban white populations of 1900 followed the same population trajectories up to the present, the actual current urban white population is 84 per cent larger.) And secondly, because, however you look at it, the South African economy of the twenty-first century is urban and non-agricultural, notwithstanding the 'agricultural-manufacturing complex'. In the greater scheme of things, the agricultural sector is small potatoes. To the extent there are indeed 'agricultural capitalists', such as the grain millers and Clover Dairy, it should be remembered that, as a rule, they tend to oppress commercial farmers rather than form some kind of continuation of them.

This is all patently obvious; moreover, it is fully consistent with the view that land dispossession played a central role in South Africa's capitalist (and increasingly non-agricultural) development. So why the obsession with the current 35,000 farm-owners? There aren't too many plausible explanations. I believe the most plausible is that 'whites in general' are not an intuitive target of fury and expectation: they offer too little psychic value. 'White farmers' on the other hand are identifiable, have a higher-than-average likelihood of being direct descendants of white commercial farming households, are symbolically very appropriate, and are vulnerable. Add to this the too-frequent frictions between farmers and farmworkers, and white farmers are, quite simply, the perfect sacrificial goat. Responsibility and, with it, blame are transferred from several million white South Africans to the 35,000 landowners.

Some readers will react by saying, 'No, the reason there is a focus on the 35,000 is that it is they who are in the way: they are sitting on land which is not legitimately theirs, and their removal is a prerequisite for a fundamental redistribution.' Zimbabwe-style land redistribution (that is, expropriation without compensation) is the obvious answer.

But what is overlooked, at least in the South African case, is that a large share of private rural real estate does not consist of active commercial farms at all, but rather of tourism, mining and, notably, second homes for well-off urbanites. (More than a decade ago, I estimated that of all private rural property, 11 per cent by hectares was not actual farmland, but this 11 per cent accounted for half of the *value* of all private rural property.)³² But owners of these non-farm rural properties are not so vulnerable, for a mix of reasons, not least the fact that they are well placed to use the legal system to defend themselves.

Another clue to the underlying symbolic rationale for focusing on the 35,000 white farm-owners is the relative intangibility of the critics' notions of why massive land reform will be beneficial. Where is the evidence regarding land demand? Where is the robust analysis of agricultural development approaches? A telling example is the 2013 founding manifesto of the Economic Freedom Fighters (EFF).³³ On the one hand, the manifesto places expropriation without compensation at the top of its list of seven 'non-negotiable cardinal pillars for economic freedom in our lifetime'. On the other hand, in terms of what is meant to be done with all this land, the plan for the EFF's 'new vision of agrarian revolution' is an embarrassingly unoriginal mix of existing policies that are failing (especially the state land lease policy), nascent policies that never get beyond the odd pilot scheme (in particular the procurement of produce from smallholders to supply government schools, hospitals and prisons), and routine functions such as extension. That the manifesto boldly declares that 'Food production, packaging, transportation, marketing, advertising, retail, and trade should constitute one of South Africa's biggest economic sectors' suggests just how thin and anachronistic the actual thinking is behind the 'new vision'.

It would appear that expropriation without compensation is not so much a means to an end ('agrarian revolution') as an end in itself. While one can assume that members of the EFF genuinely hope that people will benefit economically, that is not the primary point. Thus the EFF's Andile Mngxitama declares: 'Malema's articulation of the land issue projects a forward motion, in which land is not reducible to its monetary and economic value ... Land redress redresses the totality of dispossession.'³⁴ 'Redresses the totality of dispossession'? At a literal level, this is absurd, but Mngxitama is chiefly referring to the importance of land reform for *soul*, which is why he elsewhere speaks approvingly of Mugabe's fast-track land reform in precisely these terms: 'Zimbabwe has regained her soul.'³⁵

This is where WB/WS fails. Whether it is an efficient means of effecting land reform is beside the point. It fails because it inflicts no pain – no sacrifice – on white farmers, who represent the ills of past dispossession. From this perspective, land reform is not an economic project, but a catharsis through retribution that some indulge as a fantasy and others earnestly hope will come to pass. It also appears that the disgust for WB/WS reflects a sort of New Testament disdain for Mammon; the wounds which land reform is meant to heal are so profound as to imbue land reform with a spiritual quality that should not be sullied by profane considerations of ‘monetary and economic value’.

So here we are: a government that goes through the motions of accelerating land reform wishes to talk tough but is unsure whether and how to follow through; and radical and not-so-radical critics that egg it on without being clear as to what their own motives are. Where to from here?

The economics of WB/WS

Claims as to the impracticality of WB/WS are half true. They are also half false. Very briefly, the reason is to do with the stark difference between redistribution and rural restitution, and it comes down to basic economics. In restitution, people make a claim for the return of land of which they or their ancestors were dispossessed. Usually this means the claim is in respect of one or more particular farms. The current owners of these farms have a qualified monopoly over this land. Therefore, negotiations between the owner and the DRDLR tend to be skewed in favour of the owner, who can simply hold the deal to ransom. Not always, but too often, the state has paid too much for this land. This is why there is a clear rationale for expropriation in the context of the restitution programme.

By contrast, a person or group seeking assistance through redistribution is usually not focused on a particular piece of land, but rather is willing to consider what is available in their area. The reality is that WB/WS generally works well in the context of redistribution, but dismally in restitution. In the redistribution context, there is in most areas a fair amount of choice; for every land redistribution project between 2000 and 2008, there were 25 farm properties transacted in the market. This is one reason why, for the three-year period 2006–8, redistribution land was acquired at approximately the same price per hectare as the market average, irrespective of province, whereas restitution prices were almost three times greater.³⁶ For 2009–11, the average price per hectare for restitution land was about four times greater than for redistribution.³⁷

However, not all of the 'restitution premium' can be ascribed to the powerful position of owners whose land is claimed. Land under restitution is more likely to be actively used than land made available through the redistribution programme. The reason is that redistribution sellers are (for now) self-selected, and it stands to reason that owners not actively farming are disproportionate among those wanting to sell. The quantitative evidence is limited but suggestive. A census conducted of the 36 restitution and 81 redistribution projects in the Capricorn and Vhembe districts of Limpopo found that 85 per cent of the farms acquired for the former were actively farmed up to the time of transfer, versus 28 per cent of those acquired through redistribution.³⁸ Beneficiaries also generally remarked on better infrastructure among restitution projects. So restitution land is on average higher value land than that which is (or used to be) acquired through redistribution.

Curiously, in 2012/13 redistribution land was actually more expensive than restitution land. Whether this is a trend or a blip is not yet clear, but there is reason to suppose that it is the result of two concurrent developments. First, redistribution is increasingly focusing on acquiring going concerns and agro-processing ventures, which tend to be expensive; and second, restitution prices seem to be coming down, thanks to the steps that the Restitution Commission has taken to negotiate more authoritatively with landowners.

Be that as it may, the underlying market dynamics remain unchanged. Expropriation is justified in restitution, not for the sake of extracting below-market prices, but to prevent the government from feeling compelled to pay above-market prices and, as importantly, to put a halt to protracted haggling. Strictly speaking, the value of establishing a more robust expropriation capacity is not to undertake expropriation often, but to undertake it decisively and just often enough to serve as a credible threat, so that owners whose land is subject to valid claims are less inclined to 'try their luck' at the expense of land restitution. Moreover, an expropriation strategy that is widely perceived as hastening a fair conclusion to the restitution programme is likely to be more effective in accelerating land reform than one which is widely perceived as a tool of retribution or cost-cutting.

By contrast, for redistribution it generally makes little sense to expropriate; it would accomplish little that could not be more speedily accomplished through WB/WS, while draining energy that could rather be engaged to make sure that expropriation is used properly for restitution. The problem is that officials of the DRDLR don't seem to understand the difference between redistribution and restitution where the use of expropriation is concerned or, if they do, they are very discreet about it.

Expropriation is potentially a very powerful tool if based on a sound strategy, but will result in little practical gains if swung around aimlessly.

Conclusions

Under the heading 'Beyond the Impasse', Fred Hendricks identifies 'five main points of disagreement' which collectively account for the current unsatisfactory state of land reform. To paraphrase, these points of disagreement relate to how much land should be transferred to black people, how quickly this should be done, whether it is done through WB/WS or expropriation, whether compensation should be paid, and if so, how much.³⁹ Are these the questions that we must resolve to get past our ever-present impasse, or are these the questions we can rely on to keep us stuck where we are?

I would argue, in fact, that the questions regarding extent and pace are not central to the current impasse. Rather, the fundamental question is the issue of compensation. In broad terms, there are only two possible ways to significantly accelerate land reform: seize or expropriate white-owned land with little or no compensation, or significantly increase the government budget for land reform – at present it is less than 0.6 per cent, or about 1/25th as much as what is budgeted for social grants, or 1/34th of what the government spends each year on capital infrastructure. Whether and how to use WB/WS is important, but in relative terms it's a detail.

It is worth pausing to emphasise the parallel with Zimbabwe. The inadequate resources provided by the British government in terms of the Lancaster House Agreement matched the apathy of the Zimbabwean government,⁴⁰ which for most of the 1980s dedicated less than a fifth of one per cent of the government budget to land reform (my own estimate), of which an increasing share went to elites.⁴¹ Fast-track land reform must be understood, in part, as having been made possible by the lack of seriousness with which the Zimbabwean government took land reform prior to the parliamentary elections of 2000. As for Namibia, presently the total budget share going to land reform is about one third of one per cent. The common experience of the 'failure' of WB/WS to which Nzimande alludes was not so much caused by high land prices, as by the fact that in South Africa, Namibia and Zimbabwe land reform was (and largely remains) a low government priority.

Returning to South Africa, compensation levels approaching the confiscation level will be fiercely resisted, which is another way of saying that one will wait in vain for white farmers to suddenly start

beating their breasts with remorse in a prelude to freely relinquishing their farms to 'their' victims. There are only two types of regime which could conceivably succeed in confiscating a significant proportion of white-owned farms, namely a totalitarian power such as that imposed by the United States military over defeated Japan at the conclusion of World War II, or a regime characterised by state-condoned chaos and violence, like Zimbabwe. Either case would be disastrous for South Africa and the region, not least for the poor.

The South African government's problem is that it realises these are not desirable options, but it does not know how to steer a more promising course, and it is also distracted by the effort to fend off flak from radical critics. The National Development Plan's proposal for a 'workable and pragmatic land reform' does not help, and for various reasons; for example, the proposal effectively calls for white farmers to be handed a large administrative role in designing land reform in their respective areas, while it also somehow fails to acknowledge the important distinctions between restitution and redistribution.⁴²

In any case, whether one practises expropriation or pursues WB/WS (or, better still, an intelligent combination of the two), a budget increase is far preferable in terms of practicality and fairness. It has only the shortcoming that it does not impose a sacrifice on scapegoat white farmers. That is the real impasse.

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² Fred Hendricks, 'Rhetoric and Reality in Restitution and Redistribution: Ongoing Land and Agrarian Questions in South Africa', in Fred Hendricks, Lungisile Ntsebeza and Kirk Helliker (eds.), *The Promise of Land: Undoing a Century of Dispossession in South Africa* (Johannesburg 2013), p. 28.

³ Blade Nzimande, 'In Memory of Nelson Chisale: SACP Input to the National Land Summit' (Johannesburg 2005), p. 1 <http://land.pwv.gov.za/Land_Summit/> accessed August 2007.

⁴ Lungisile Ntsebeza, 'Land Redistribution in South Africa: The Property Clause Revisited', in Lungisile Ntsebeza and Ruth Hall (eds.), *The Land Question in South Africa: The Challenge of Redistribution and Transformation* (Cape Town, 2007), p. 129.

⁵ L. Ntsholo, 'Land Dispossession and Options for Restitution and Development: A Case Study of the Moletele Land Claim in Hoedspruit, Limpopo Province' (MPhil thesis, Institute for Poverty, Land and Agrarian Studies, University of the Western Cape, 2009), p. 1.

⁶ Nancy Andrew, 'The Dilemmas of Apologizing for Apartheid: South African Land Restitution and the Modimolle Land Claim' (International colloquium 'Les Frontières de la question foncière – At the Frontier of Land Issues', Montpellier, 17–19 May 2006), p. 1.

⁷ Andile Mngxitama, 'Mugabe Hero of African Liberation', *Sunday Independent*, 3 June 2013 <<http://www.iol.co.za/sundayindependent/mugabe-hero-of-african-liberation-1.1525765#.Uz-gRvmSwz8>> accessed December 2013.

⁸ Republic of South Africa, *Constitution of the Republic of South Africa* (Pretoria, 1996).

⁹ Thoko Didiza, 'Debate on Budget Vote in Proceedings of the National Council of Provinces' (11 April 2000) <<http://www.pa.org.za/hansard/2000/april/11/proceedings-of-the-national-council-of-provinces-t/appropriation-bill-review-of-policy>> accessed December 2013.

¹⁰ Thoko Didiza, 'Discussion of the Integrated Land Distribution and Agricultural Development Programme in Proceedings of the National Council of Provinces' (10 June 2000) <<http://www.pa.org.za/speech/290242>> accessed December 2013.

¹¹ Gugile Nkwinti, 'Comments Made at Economic Sectors and Employment Cluster Media Briefing' (Cape Town, 24 February 2012) <<http://www.sanews.gov.za/south-africa/willing-buyer-willing-seller-slowng-land-reform-says-minister>> accessed December 2013.

¹² Jacob Zuma, 'State of the Nation Address by His Excellency Jacob G. Zuma, President of the Republic of South Africa on the Occasion of the Joint Sitting of Parliament' (Cape Town, 14 February 2013) <<http://www.thepresidency.gov.za/pebble.asp?relid=13>> accessed December 2013.

¹³ Republic of South Africa, Property Valuation Bill (B54–2013)', para 1.2 <http://www.parliament.gov.za/live/commonrepository/Processed/20140414/554372_1.pdf> accessed December 2013.

¹⁴ Department of Rural Development and Land Reform, 'A Policy Framework for Land Acquisition and Land Valuation in a Land Reform Context and for the Establishment of the Office of the Valuer-General', p. 8 <[http://www.ruraldevelopment.gov.za/phocadownload/Documents/ovg per cent20policy per cent20document per cent20ex per cent20cab per cent20com per cent204_2.pdf](http://www.ruraldevelopment.gov.za/phocadownload/Documents/ovg%20per%20policy%20document%20ex%20cab%20com%204_2.pdf)> accessed January 2014.

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- ²³ Andrew, 'The Dilemmas of Apologizing for Apartheid', p. 4.
- ²⁴ Ntsebeza, 'Land Redistribution in South Africa', p. 109.
- ²⁵ Hendricks, 'Rhetoric and Reality in Restitution and Redistribution', p. 30. Hendricks is referring to a discussion in Cheryl Walker, *Landmarked: Land Claims and Land Restitution in South Africa* (Johannesburg, 2008).
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³⁴ Andile Mngxitama, 'EFF Hits Koppie on the Head on Land Redress', *Mail & Guardian*, 18 October 2013 <<http://mg.co.za/article/2013-10-17-eff-hits-koppie-on-the-head-on-land-redress/>> accessed December 2013.

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