

ADDRESSING LAND REFORM IN SOUTH AFRICA: 'COOL HEADS' NEEDED

– In search of restitution, redistribution and security –

By Donnelly McClelland and Mike Burnard



South African president Cyril Ramaphosa, addressing the nation on the night of 31 July, announced that the ANC (the African National Congress) planned to go ahead with expropriation of land, without compensation.

Mr Ramaphosa stressed: "The ANC reaffirms its position that the Constitution provides for radical transformation both of society and the economy." He also said that a proper reading of the Constitution "enables the state to effect expropriation of land with just and equitable compensation and also expropriation without compensation and in the public interest".

He went on to explain that the public hearings (a process convened by a parliamentary Joint Constitutional Review Committee, which is still ongoing) have now drawn attention to the need to make this explicit in the Constitution. "The ANC will, through the parliamentary process, finalise a proposed amendment to the Constitution that outlines more clearly the conditions under which expropriation of land without compensation can be affected," he said.

His announcement, before the review committee's conclusion or report, has caused consternation and uncertainty. Yet many influential voices have called for a calm and considered response to the issue.

Land reform gets 'lost' in politics

Unfortunately, it appears that the public hearings were 'highjacked' by populist rhetoric, which reduced the vital question of land reform in South Africa to a single question: "Should the Constitution be amended?" What is being lost in this oversimplification of the issue is the fact that expropriation, with or without compensation, is not land reform in itself. 'Expropriation without compensation' is a mechanism of acquiring land and is thus a step in a longer process of settling people on land. There are other, crucial components in the process, such as identifying suitable land for redistribution, identifying beneficiaries, determining mechanisms that will indicate who will get what piece of land for what purpose, and then of course, the details of post-settlement support (an area where much of the failure has come with commercial farms already transferred).



It is blatantly clear that the issue of land has become highly politicised in an election year. Mr Ramaphosa is currently juggling many issues – he needs to try to win an election with a divided party, he must grow the economy, he needs to encourage foreign investment – while keeping the land reform debate going. And Mr Ramaphosa and his inner circle understand the complexities (and consequences to the economy) of expropriation without compensation very well. It's no secret that they argued strongly against the ANC proposal at its December conference that the Constitution be changed. When that argument failed, they initiated the review committee, and probably hoped they could delay a decision until after the election in 2019, but it became apparent as emotions ran high that they would need to make a move if they hoped to secure an electoral victory (there were reports that a faction within the National Executive Committee that supports former president Jacob Zuma was attempting to use the land issue to embarrass Mr Ramaphosa and his allies). Political analyst Max du Preez argues: "The compromise would be an amendment to Section 25 of the Constitution that would satisfy the clamour for change, but not open the door to large scale expropriation without compensation that would damage agricultural output and devastate the economy." In a recent address, du Preez reasoned that "Cyril Ramaphosa will be made or broken by this issue."

Certainty vs. a blank cheque

Steven Friedman, in an article for *The Citizen*, raises the possibility that Mr Ramaphosa's latest action could in fact be highly strategic and "end up strengthening the property rights on which investment depends". Supporters of 'land expropriation without compensation' believe it is an essential step in the process of rectifying the injustices of the past racial discrimination, while opponents believe it threatens property ownership and will strangle investment. However, to understand how people's fears concerning property rights could be misplaced, one needs to understand what property rights are, and what South Africa's constitution says.

Many people's view of property rights maintains that one can do whatever one wants with what one owns. But this isn't true. There are always limits to one's actions – that's why there are laws. People do not naturally always do what is best for others, let alone themselves, therefore laws are promulgated in order to direct, guide and regulate people's behaviour. This is true for property ownership as well. You cannot simply do whatever you like with the house you own, for example. You cannot turn it into a production facility for drugs, or even use it for a legitimate business unless you have followed the necessary procedures that allow for that business in a residential area. Rights are protected and governed by law. There is no unlimited right to property anywhere. If owners ignore these laws, they are forced to give up some of their property. Some might even lose the property. Friedman sums it up as follows: "The property rights of owners are... strong enough to allow them to invest with confidence when they know what the rules are that decide whether they keep their property."



South Africa's Constitution may be the highest document of the land, but it is not a holy document – it simply spells out a set of ideals that provides a guiding function when legislation is drawn up and interpreted, and guides how decisions need to be made. Expansive language is deliberately used in the Constitution in order to allow for interpretative possibilities that correspond to changing circumstances, unlike the more explicit and specific language of legislation.

The Constitution is often held up by supporters and detractors as a "cast-iron guarantee of property rights", but it is nothing of the sort. In fact, as it currently stands, it says the State can expropriate

property only if it pays compensation and lists criteria that courts must take into account when deciding on compensation. But Clause 8 says: "No provision of this section may impede the state from taking legislative and other measures ... to redress the results of past racial discrimination." That is, if it complies with section 36(1), which says the measure must be: "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". Friedman summarises: "So the section does allow expropriation without compensation – but the wording spelling out when it is allowed is vague. If the government were to test this in court, different judges would inevitably come to different conclusions. This gives owners no certainty and so they don't know whether their property is safe." So, if the Constitution is changed to make clear which property may be expropriated without compensation, then property rights would be stronger because it would be clear to owners whether their property is safe and what to do to keep it that way.

Legislation promulgated in terms of the Constitution provides the details. Therefore, even if an amendment is made to Section 25 of the Constitution, it would simply set out the parameters for the general requirements that the State must adhere to when it wants to, amongst other things, expropriate land. The expropriation itself is not done in terms of the Constitution, but in terms of legislation promulgated in line with the Constitution. All these processes require parliamentary discussion, public participation (which is considered "informed and inclusive") and a parliamentary vote where a two-thirds majority would have to vote in favour of it. Some people argue that since it affects foundational values of the Constitution, a 75% majority is needed. The fact that even this is not agreed upon means that it would potentially be a long process, which could even involve the Constitutional Court. Whichever way the process goes, it will still remain the State's responsibility to expropriate land, and thus it is in everyone's interest that an effective means be sought and implemented.

A response from AgriSA

Dan Kriek, president of AgriSA, offered a surprising response to Mr Ramaphosa's announcement in an article in *Die Burger* (3 August). His overwhelming message was one of hope. He spoke of a bright future for agriculture and farming in South Africa. Although the issue of amending the Constitution does concern him, he went on to affirm that South Africa needs more black farmers and farm ownership, though he views the latest move as electioneering, which will not result in more black farmers. He stressed that there are plans for land reform that can work, but that a crucial problem is people's inability to work together and to trust one another. He also expressed his conviction that South Africa would not ultimately follow the route of Zimbabwe (where radical land reform has been blamed for their economy's collapse and massive unemployment).



In a recent address at Agri Eastern Cape's 17th annual congress, Kriek reassured Eastern Cape farmers that organised agriculture would adopt a progressive, partnership-driven approach to land reform. But he also called on them to maintain "a cool head" in the face of uncertainty and to acknowledge the strength of the moral and constitutional argument for land reform, while also making the economic case against expropriation without compensation.

A polarising issue



Professor Ruth Hall of the University of the Western Cape's Institute for Poverty, Land and Agrarian Studies (PLAAS), in a speech delivered on 2 August, emphasised how the public hearings have exposed the extent of division and grievance on questions of land. She said: "Land is simultaneously a material issue about poverty and inequality (who owns assets in our economy), but it also symbolises identity, home and citizenship. We need to acknowledge that the land question is not just a matter of farming, or the economy. It is something visceral and raw, and what we have seen in recent weeks and months is that South Africans are deeply polarised – and this is overwhelmingly along racial lines." In summary, she admits that South Africans are "talking past each other" and that there is "anger and fear", but also "hope of something different to come".

Political analyst Max du Preez recently addressed a group of senior business and professional people, most of whom were black, and was deeply surprised at some of the reactions he got. Despite explaining facts and figures surrounding the low numbers of black South Africans who actually want to be farmers, and how failures of land reform since 1994 were more a reflection on government policies and incapability than on the Constitution, and that large chunks of the 18 million hectare communally owned black areas (the old 'bantustans', or homelands) are now unused as a result of the migration to the cities, their reactions were predominantly emotive.

Some of the attendees (all of them with at least one university degree and very successful in their fields) confronted du Preez with arguments commonly seen on social media and heard from EFF (Economic Freedom Fighters) populists: "The colonial land thieves never debated, they just stole the land, so why should we even debate this issue?" and "It is none of anyone's business what black people do with the land they're going to take, it's theirs and they can do with it what they want" and "How would you feel if someone robbed your house and afterwards wanted to negotiate about the stolen goods?" Du Preez came to the conclusion that "frustration and anger about continued racial inequality [and] resentment about white people's continued comfortable lives in the face of black poverty are more important than the cold facts about land redistribution." Inequality and economic exclusion remain deeply entrenched – the well-off are no longer all white, but the poor are still almost all black.

Elmien du Plessis, associate professor in Law at North-West University, maintains that there is a general agreement: "There is a real need to address the injustices of the past, exacerbated by the slow pace of land reform. Most South Africans agree on this. But it needs a holistic approach that addresses the whole system that is land reform."

Government's track record on land reform

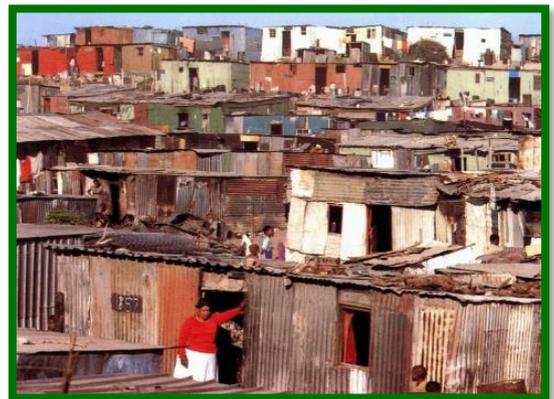
In 1993, Mr Ramaphosa, who was then secretary-general of the ANC, spoke at the Land Redistribution Options Conference in Johannesburg, where a future plan for land reform was being worked out. He said in his opening remarks: "The massively unequal distribution of land is not merely an unfortunate legacy of apartheid; it is the totally unacceptable continuation of apartheid." When the ANC took over the reins of government in 1994, they promised to start by redistributing 30% of commercial farmland within the first five years, but by 1999, less than 1% had been redistributed. Now, 24 years later, an estimated 9.7% of commercial farmland has been acquired or redistributed (though some doubt the accuracy of official statistics; the real figure could be lower).

There has been no national programme in place to monitor the success of the land redistribution process. So progress has had to be measured through scientific case studies, media reports and anecdotal evidence. Based on these sources, it has been established that those getting land have been unable to use it effectively to improve their lives, largely for two reasons – the imposition of inappropriate business plans that have attempted to replicate a commercial model of farming, and an absence of appropriate support. Problems, therefore, relate not only to the pace of reform but also its inadequate outcomes and wider policy context. There is massive disillusionment.

The High-Level Panel of 2016-2017, appointed by Parliament and chaired by former president Kgalema Motlanthe, found that the State has mismanaged land reform; there has been poor policy and leadership, weak institutions, low budgets, and corruption. It explicitly found that the Constitution is not to blame for all this. The report itself went on to depict a State hostile to the interests of poor, shoring up private ownership and chiefly powers over the interests of the majority, and in violation of the Constitution. Clearly, doing more of the same is not going to be the solution.

Hunger for urban land, not farmland

A highly significant aspect to the land debate is the matter of urbanisation. South Africa ranks among the most urbanised of Sub-Saharan Africa, at around 66%. South Africa's eight largest cities cover 2% in terms of land area but contain 38% of the population. In the 10 years from 2000-2010, the province of Gauteng saw a 31% increase in population, while the Western Cape an increase of 29%. A large proportion of that influx was from the former 'homelands'. More than 10 million people moved from the communal areas ('homelands') to cities and towns in Gauteng and the Western Cape alone since 1994. This rapid urbanisation resulted in sprawling squatter camps and a high demand for decent housing. So the land question is no longer a purely rural or agrarian issue, but also an urban one. Expropriation without compensation (or compensation well under market value) of urban land would look very different from the expropriation of economically active commercial farms.



What has been suggested regarding addressing the need for urban land includes land held for speculation, under-utilised land or unused land with a productive potential, land that is being degraded, and "hopelessly indebted land". Tangible examples include the expropriation of abandoned buildings (e.g. parts of Johannesburg CBD) and land, or land that has become 'useless' for other activities (e.g. an area in Cape Town where the landowner has mined the entire property for sand).

Changes in rural areas



There were approximately 60,000 commercial farmers in the mid-1990s, but with policy changes and agricultural deregulation, this number has shrunk to only about 35,000, and there are now more companies than individuals owning farms. Professor Hall (PLAAS) said: "In addition, more than half of all farmland in South Africa has been transacted since 1994. This means that while some who own the land got it through colonialism or apartheid, most did not. A lot of the new owners are companies rather than white families. Multinational companies, pension funds and others are among the growing owners of farmland."

The road ahead

The ANC has declared their intention to pursue the possibility of an amendment to Section 25 of the Constitution, the so-called 'property clause'. As mentioned previously, this will be a process, which takes time and involves participation. It is in South Africa's best interest that a sound amendment is found from which realistic and workable legislation may be promulgated to adequately address the deep inequalities in the nation.

Most South Africans are in agreement that the issue of land reform is a moral imperative, but the means thereof remains hotly debated. Clearly, past mistakes in implementation, blatant corruption and mismanagement, as well as a lack of trust between affected parties, have all contributed towards a deeply flawed system. But this does not mean that one abandons the process. A much-loved South African saying goes, "n Boer maak 'n plan" – roughly translated as "A farmer makes a plan." And nowhere is this more needed than in South Africa's current climate. But all the plans in the world cannot succeed unless the right attitude accompanies those plans.

FROM A CHRISTIAN PERSPECTIVE

"The land question remains a clear barometer of the continuing struggle for justice and development in post-apartheid South Africa," says Itumeleng Mosala. If this quote be true, then the current furore over 'expropriation without compensation' indicates all is far from well in the struggle for justice and development in post-apartheid South Africa.

The Bible contains a list of names every Christian should be familiar with, especially in a nation like South Africa, which claims a high percentage of Christians. See if you recognise any of the following: Shammua, Shaphat, Igal, Palti, Gaddiel, Gaddi, Ammiel, Sethur, Nahbi and Geuel. The fact that you don't recognise these names is probably more their failure than yours. Each of these was a leader in his own right: brave, highly skilled, with power and authority, and above all, chosen by God. And yet their names faded into obscurity.

They were 10 of the 12 spies sent by God to scout out the Promised Land (the account is documented in detail in Numbers 13). "Go and explore the land of Canaan, which I am giving to the Israelites," God said to Moses. The command was quite clear. It was not a declaration of war. It was not a call to fight. It was an invitation to explore what was already promised to them. It was a gift that needed to be discovered in the context of a sovereign God with goodness in mind.

So how did these heroes mess it up so badly? Why did their names become symbols of suffering to the people of Israel and why did they simply fade into the insignificance of Biblical heroes? Simply by not placing the 'giants' of their time in the context of the God that they served. Which is exactly what many South African leaders are doing today.

Through the 'social media' of that era (Number 13:26), the spies gathered the whole Israelite community together and reported to the whole assembly. Using logic, assumptions and manipulation, they then led the people of God into a place of fear and despair. And the tragedy is that the overwhelming majority of Israelites were ready to go along with their advice. When fear becomes a culture, it is far easier to follow those with messages of hatred than those with messages of forgiveness. It is easier to fear than to trust. It is far easier to believe the addictive message of victimisation than it is to pursue justice for others and reconciliation for all.

The sin of these 10 spies – the reason why they faded into oblivion and the reason why they led the people of God into a 40-year desert journey of 'hell' – was not their vision of the giants, but proclaiming the powerlessness of their living God and His inability to fulfil His promises.

Standing with the fruit of the promise in their hands, so abundant and big that it had to be carried by two men, they spread rumours of fear: "The people who live there are powerful, and their cities are very large and well fortified. Even worse, we saw the descendants of the giants there" (Numbers 13:28).

Sound familiar? "The ANC is so powerful, and Mr Ramaphosa has now approved that the Constitution be amended to legalise land expropriation without compensation." Even worse, we see 'giants' in the EFF – Julius Malema and his followers who are "spreading hatred and violence".

Consider some of the messages on social media: "Ons land is in 'n gemors" [Our land is in a mess]. "They're going to steal our land." "We're going to be a second Zimbabwe!" "Anarchy and food shortages are our future." "Ramaphosa is the new dictator of Africa." "We're on the brink of a civil war!"

Ironically, many such comments are made while discussing politics around braais (barbeques), with a steak in hand. What a disgrace! What a shame! What an incredible “slap in the face of God”. What a scandalous declaration of the powerlessness of God.

It needs to be pointed out again that the overwhelming majority of Israelites were ready to go along with the 10 spies’ advice. They were afraid of being slain by powerful enemies in Canaan. How often don’t we attempt to stand in the ‘light’ of our own unbelief? And how eagerly we believe those who confirm our fears, instead of heeding those who can confirm our faith.

So how do we REPORT this when news is overwhelmingly negative?

Remember the two other spies among the bearers of bad news – Caleb and Joshua. There was only one difference between them and the 10 others. They were not smarter and they were not braver, BUT they had a **different spirit** in them.

Yes, we do live in troubled times. There is no denying the fact that there are ‘giants’ that look overwhelmingly threatening in our society. Yes, the levels of crime and corruption do draw above-average concern. Caleb and Joshua never denied that there were giants in the Promised Land – they pointed to God. The doubters said: “Can God?” Caleb affirmed, “God can!”

God searches for those who will report with a different spirit. “But because My servant Caleb has a different spirit and follows Me wholeheartedly, I will bring him into the land he went to, and his descendants will inherit it” (Numbers 14:24).



If, in our reports or comments on social media, we do not reflect a different spirit, then we become part of the problem, not the solution. We become no different than those we oppose, and in the process, we will lead countless others away from the ‘promised land’. If we do not encourage our nation to behold a sovereign God, we have nothing to offer indeed.

Caleb and Joshua did not call the nation of Israel to take up arms, but to take possession.

So how do we RESPOND when threats are increasingly violent?

Take revenge? Nowhere in Scripture are Christians called to be passive observers in times of injustice. Believers are called to respond and take action. We need to take revenge! However, our weapons need to match a crucified life. When we are threatened, we need to ‘take revenge’ by praying for our persecutors. When we are cursed, we ‘take revenge’ by blessing our enemies. When we are hated, we ‘take revenge’ in the strongest of terms, by loving. These are not our words. These are not the idle, impractical ideologies of a delusional believer. Go read Matthew 5 again. These are the words of Christ Himself. Take it or leave it, but never again confess Christ as your Lord if you choose to have the same spirit as the 10 forgotten spies.

I [Mike Burnard] have been accused recently, in public, of being a delusional ‘Kumbaya’ Christian: good for nothing, with an unrealistic approach, and being a “handsopper” (a traitor) to the community. On the contrary, I am calling Christians to radical action. Take revenge! But do it in the way that Christ taught and did. In all honesty, I would rather be a Caleb in God’s eyes than a hero in the world’s eyes.

So how do we REACH this goal when everybody else seeks the sensational?

Six times in Scripture, we read that Caleb “followed the Lord wholeheartedly”.

- Numbers 14:24 “But because My servant Caleb has a different spirit and follows me wholeheartedly, I will bring him into the land he went to, and his descendants will inherit it.”
- Numbers 32:12 “... not one except Caleb son of Jephunneh the Kenizzite and Joshua son of Nun, for they followed the LORD wholeheartedly.”

- Deuteronomy 1:36 "... except Caleb son of Jephunneh. He will see it, and I will give him and his descendants the land he set his feet on, because he followed the LORD wholeheartedly."
- Joshua 14:14 "So Hebron has belonged to Caleb son of Jephunneh the Kenizzite ever since, because he followed the LORD, the God of Israel, wholeheartedly."



The conclusion is easy. You cannot follow the Lord "wholeheartedly" and still report and respond like the world. Following Christ "wholeheartedly" will, and must, give you a different spirit or you offer nothing at all.

The Hebrew phrase actually means that Caleb was "filled to the full with God". He was a man who was filled and flooded with the very presence of God, which Paul describes in 2 Corinthians. He describes the minister of the New Covenant as one who is optimistic and successful and influential. He says, "Who is sufficient for these things? Not that we are sufficient of ourselves to claim anything as coming

from us; our sufficiency is from God, who has qualified us to be ministers of a new covenant..."

That was the key to Caleb's success. He not only followed the Lord God of Israel, but he was flooded with God, wholly, fully. He had the mind of God himself.

How do we pursue having "a different spirit" in a time when the popular voice of retaliation and revenge becomes the accepted and dominant one? Pursue a different spirit, always – among your friends, among your enemies, on social media, in private and in public.

Make Ephesians 6:7 your benchmark when posting anything on social media: "Serve wholeheartedly, as if you were serving the Lord, not people."

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