

Is a Land Redistribution Bill on the cards for South Africa?

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At a recent media conference, Minister of Justice and Correctional Services, Ronald Lamola, indicated that a Land Redistribution Bill was on the cards for South Africa. The High-Level Panel on Key Legislation recommended as far back as 2017 that a National Land Reform Framework Bill was required to provide coherence between redistribution, restitution and tenure and provide a clear framework for redistribution. The panel went as far as drafting a proposed Bill. The Presidential Advisory Panel on Land Reform and Agriculture supported this recommendation and proposed that the Bill should be gazetted and debated in Parliament urgently.

In this article, we analyse the need for and proposals for a Land Redistribution Bill.

What is redistribution, and where does it fit in?

Redistribution is one of the three pillars of land reform in South Africa. Lately, the Department of Agriculture, Land Reform and Rural Development has added a fourth pillar, namely land development. Section 25(5) of the Constitution gives the mandate for redistribution. The section provides that *“The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”*

Although redistribution is only one of the pillars of land reform, which is the broader concept, there are also redistributive elements in the tenure reform programme. The Labour Tenants Act, Upgrading of Land Tenure Rights Act (ULTRA) and the Extension of Security of Tenure Act (ESTA) are aimed at tenure security and provide permanent solutions that are redistributive.

The 1997 White Paper on South African Land Policy provided, with regard to redistribution: *“The purpose of the Land Redistribution Programme is to provide the poor with land for residential and productive purposes in order to improve their livelihoods.”* A big debate over the past 20 years has been what the focus of the redistribution programme should be – simply pro-poor as the White Paper suggested, aimed at creating a class of black commercial farmers as the Land Distribution for Agricultural Development (LRAD) programme intended, or maybe both? And a critical question that needs to be answered is whether the state ownership of land can be regarded as redistribution at all?

How successful were past attempts at redistribution?

There have been various programmes over the years that were intended to facilitate redistribution. The first one was the so-called Settlement Land Acquisition Grant (SLAG) programme from 1997 to 1999. A state grant of R15 000 was way too little to purchase any

land, so beneficiaries had to come together in large groups to buy land, and the numbers were then very often unsustainable.

Then in 2001, Minister Thoko Didiza introduced a new redistribution programme called LRAD (Land Redistribution and Development Programme). This programme was geared more toward establishing black farmers. In this programme, grants were made available to beneficiaries on a sliding scale of between R20 000 and R100 000. All beneficiaries were required to make their own contribution, either in cash or in kind. The LRAD programme did deliver some successes. Many people who would never otherwise have had a chance to acquire land for farming had the opportunity to do so. A number of these beneficiaries took to farming on the LRAD farms.

In 2006 the Proactive Land Acquisition Strategy (PLAS) was launched to replace LRAD. This strategy aimed to speed up the transfer of land through the government's proactive acquisition of the land in the market for redistribution purposes. The implementation manual of the PLAS programme stated that it was primarily pro-poor. It was implemented using the Provision of Land and Assistance Act, Act No. 126 of 1993, as amended. The land was directly acquired and warehoused within the government. In theory, the beneficiaries could get ownership after a period; in practice, anecdotal evidence seemed to point to permanent state ownership of the land acquired. It seemed that state ownership of land in terms of PLAS and the accompanying State Land Lease and Disposal Policy undermined agricultural investment and productivity as the beneficiaries felt insecure with tenure arrangements under which the state exercised undue influence over their activities. Private sector investment was basically excluded as the commercial banks required tradable tenure rights so that the land could be put up as collateral for loans. Beneficiaries were forever dependant on the state, not only for tenure security but also for production finance.

What will a Land Redistribution Bill deal with?

The presidential advisory panel recommended that such a Bill should operationalise 'equitable access' and provide a framework for all aspects of land reform; establish guiding principles for redistribution, restitution and tenure with land administration included as the fourth element of land reform; set legal criteria for beneficiary selection; land acquisition and the choice of land for redistribution; to set in place measures to ensure transparency and accountability; enable allocation of secure long-term use and benefit rights, and to provide for alternative dispute resolution.

The proposed National Land Reform Framework Bill contains several land redistribution principles. These include things such as:

- Reasonable measures to ensure that land is made available on an equitable basis, which means giving priority to people who are landless and poor.
- A primary focus on the poor and disadvantaged.
- A land redistribution programme that considers the capacity of institutions responsible for implementing the programme and is balanced and flexible.

- A coherent and comprehensive land redistribution programme that is sufficiently resourced and able to secure equitable and secure access to land and related resources including water.
- Planning for land redistribution that must happen at both national level and local level.
- An equitable balance between the expressed demand for land for agricultural and non-agricultural purposes, including settlement, as well as multiple uses of land for both commercial and non-commercial purposes.
- The promotion of gender equality.
- State resources for land redistribution must be allocated and used in a manner designed to ensure that large numbers of poor and vulnerable South Africans benefit, and thus promote equitable access, taking due account of the need for post-settlement support and other relevant factors.
- Redistribution must be designed to overcome the legacy of apartheid and apartheid geography.
- Racial integration in rural areas is to be promoted, as is the provision of opportunities for poor and landless people to gain access to land in areas previously dominated by the wealthy.
- The land redistribution programme must guide the uses of land in rural and peri-urban areas to promote equitable access to land in such areas in a manner that contributes to the overcoming of the legacy of apartheid geography around the urban centre.

The proposed Bill also deals with target groups, prioritisation and beneficiary selection. It proposes a focus on women and the very poor. It requires that beneficiary selection happen transparently and should consider the demand for land. A land demand register should be developed. The selection of beneficiaries must be informed by the outcomes of substantial public and broad community engagement. The Bill further proposes that the state must develop a land reform implementation framework for every district municipality, which framework must, amongst other things, reflect the needs for land, the socio-economic profile of people expressing a need for land, an assessment of competing needs and demands for land. Land demand shall guide the acquisition of land. Such land can then be purchased or expropriated.

What are the elements required for successful redistribution?

Tiernan Mennen comments in an article entitled "*Land Reform Revisited: Can Latin America Get It Right and Should It Even Try?*"¹² on the difference in approach between the Asian countries that had successful land reform programmes (Taiwan, Japan and South Korea)

¹ Land Reform Revisited: Can Latin America Get It Right and Should It Even Try? T Mennen: <http://www.iaar-gwu.org/node/62>: International Affairs Review

versus the Latin American countries that were less successful (Peru, Bolivia and El Salvador). He states, amongst other things: *“Successful land reforms in Japan, Korea, and Taiwan have been credited with spurring the economic success and shared growth models of the past forty years. Latin America, meanwhile, has failed to achieve this same success despite its own attempts at land reform and economic restructuring. The previous analysis reveals five major differences between the two regions’ models of reform.*

1. *Inclusive policies.* The political models behind the land reform programmes employed in Latin America are striking. Throughout Latin America, land reform was used as a political tool for constituency building and incorporated the Marxist ideologies of the new political class. In contrast, Asian reforms incorporated the landowners that were displaced, either by involving them in the local land committees that valued and redistributed their land or, in the case of Taiwan, through active economic restructuring from inefficient agricultural production to shareholder interests in new industries. Asian reforms were also implemented on purely economic and shared growth rationale rather than political constituency building, even though they succeeded in the latter.
2. *Individual ownership rights.* The communal ownership and collective production aspects of Latin American reforms were not found in the successful Asian models. Instead, Asian reforms focused on individual ownership and family farm production.
3. *Clear, marketable title to land.* The market-based model of Asian land reforms leads to the third important difference between the two land reform camps. The vesting of clear, unhindered title to the land was a priority and occurred much more frequently in Asia than in Latin America.
4. *Democratic redistribution mechanisms.* One of the more interesting aspects of the successful Asian land reform model was the decentralisation of land committees and the focus on mass democratic participation and local control.
5. *Post-distribution extension support.* An important part of land reforms is the extension of technical agricultural services to beneficiaries post-redistribution. Redistribution is not enough in itself but must be reinforced by technical capacity building. Latin American reforms, hampered by a lack of decentralised reform institutions, could not respond to beneficiaries’ technical needs.”

These points all hold for redistribution in South Africa as well.

Beneficiary selection and land donation

The Department of Agriculture, Rural Development and Land Reform (DALRRD) published a beneficiary selection and land allocation policy in 2020. The policy aims to ensure household food security and food sovereignty. It proposes to cater for diverse land needs, not only agriculture. It envisages independent beneficiary selection panels and a land application

register. The policy proposes that women, youth, disabled people and military veterans should be prioritised in the beneficiary selection process. 50% of all land acquired will be allocated to smallholders, and no less than 50% of this land should be allocated to women, while not less than 40% to youth, and 10% to persons with disabilities.

The over-regulation of beneficiary selection for farming purposes is problematic. The policy is very prescriptive in terms of percentages from certain categories of persons. Different criteria should apply to land that is earmarked for farming beneficiaries as certain character traits such as perseverance and passion for farming, as well as aptitude, experience and access to financing, are likely to determine a person's success in farming.

The policy does not state how the independent selection panels are going to be constituted. These panels must contain farming and financing experts. Corruption will have to be guarded against.

Land donations can also contribute to redistribution. DALRRD also accepted a land donation policy in 2021. This policy is intended to guide the donation of land for land reform purposes. It aims to address some obstacles to land donation, such as the subdivision of agricultural land or the payment of donations tax. It proposes that beneficiaries of donated land should get title to the land. In this sense, it can simplify the process for those landowners who have made up their minds that they want to donate land for altruistic purposes. Expectations should be tempered as the policy does not, however, provide for clear incentives that could prompt current landowners to consider a land donation. It also places quite an administrative burden on landowners who want to donate to pre-selected beneficiaries. There may, however, be an opportunity to explore incentives for land donation further.

Conclusion

We are likely to see a Land Framework Bill this year, with a strong focus on redistribution. It is likely to contain elements of the draft Bill proposed by the high-level panel and endorsed by the presidential advisory panel. It is also likely to incorporate beneficiary selection and land donation policies elements. It may also include expropriation powers for redistribution purposes. Hopefully, it will help curb corruption, improve land delivery, and provide sensible selection criteria for beneficiaries.