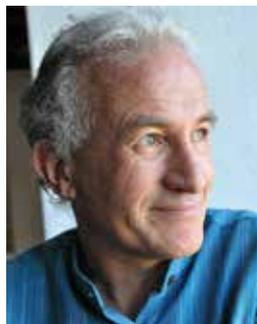


# Land Redistribution, Populism and Elite Capture: New Land Reform Policy Proposals under the Microscope



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*Land reform in post-apartheid South Africa is in disarray – and everyone knows it. The Minister of Rural Development and Land Reform, Gugile Nkwinti, may be incorrect in stating repeatedly that ‘90 percent of land reform projects have failed’, but research reveals that at least half of all projects have seen little or no improvement in the lives of their beneficiaries, mostly because of poor planning and lack of effective support<sup>1</sup>. The extremely slow pace of land transfers against planned targets is not in doubt.*

Given the powerful political symbolism of racially unequal patterns of land ownership, and amidst increasingly vociferous calls by some political figures to simply ‘take back the stolen land’, most South Africans probably agree that the Land Question simply *has* to be resolved, one way or another. Policies must address the long-term legacies of the large-scale land dispossession that took place both prior to and after the 1913 Natives Land Act, that includes a divided and often dysfunctional space-economy, deep-seated rural poverty and lop-sided power relations in the countryside.

But exactly what kind of land reform do we need, and what specific goals and objectives should it pursue?

Here there is much less agreement, and controversies abound over the wider purposes and significance of land reform in a rapidly urbanizing society (i.e. the ‘*why*’ aspect). Other key aspects include ‘*how*’ to acquire and redistribute land and ‘*how*’ to secure land tenure rights, ‘*who*’ should be targeted as key beneficiaries, ‘*where*’ land reform should take place, and by ‘*when*’. Again, there is no consensus on how to answer these questions. A slew of recently released government policies dealing with land restitution, redistribution and tenure reform, the focus of this article, are likely to generate only further controversies.

Policy-making on land has become a somewhat *ad hoc* process in recent years. In 1997, a comprehensive and ambitious White Paper was published and charted a reasonably clear way forward. Since then, however, policies have changed track several times, and key shifts have not been located within a widely agreed vision or a clearly articulated rationale for land reform. New directions have often failed to take into account the lessons from implementation of previous policies. In 2009

the newly-elected Zuma government announced that rural development and land reform were national priorities, and in 2011 a short, 11-page Green Paper outlined some new policy thrusts, but with scant justification or discussion of past experience.

Two years later, and with a national election around the corner, it seems government does not intend to publish an expanded version of the Green Paper, or a comprehensive new White Paper. Instead, a series of short policy documents have recently been signed off by the Minister and placed on the Department's website, and it appears that no public debate or discussion of them is planned. A component that requires parliamentary approval, a far-reaching amendment to the Land Restitution Act of 1994, may be rushed through parliament before next year's election, perhaps as a vote-catching exercise. Other new laws, for example on land expropriation and traditional leadership, are also in the pipeline, but the time frames for these are unclear.

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Many of these new policy shifts are highly problematic and, populist rhetoric to the contrary, are likely to result in elite capture of land reform as well as continued insecurity of tenure for the majority of rural people in communal areas, on privately owned and restored or redistributed land. That these policies have been adopted in the centenary year of the 1913 Natives Land Act, which denied or rendered insecure black people's ownership of land across most of the country, is deeply ironic.

This article focuses land redistribution, one of the three key sub-programmes of land reform (the others are restitution and tenure reform). It analyses the core proposals embedded within the new policy documents and assesses their underlying assumptions. It argues that capture of land reform by a small number of relatively wealthy 'emerging' black farmers is their likely consequence.

## Land redistribution since 1994

Land redistribution seeks to address gross racial inequalities in land ownership inherited from the past, but also has the potential to address an underlying cause of rural poverty – lack of access to productive land, or land suitable for settlement, together with secure rights to such land. In 1994 the initial target was to redistribute thirty percent of agricultural land, or 24.5 million hectares, by 1999, later adjusted to 2014. By 2012 around 7.5 percent (or 7.95 million hectares) had been transferred through a combination of redistribution and restitution.

A combination of ideological and pragmatic considerations informed the ANC's acceptance of the protection of property rights in the new constitution of 1996, and also the adoption of a 'willing seller, willing buyer' (i.e. market-friendly) approach to the acquisition of land for redistribution. Until 2006/07 the primary mechanisms for redistribution involved grants to land reform beneficiaries for land purchase and land development, the establishment of legal entities such as communal property associations and trusts to own land, and business planning to ensure projects were 'viable'. These plans have often been very poorly aligned to the resources, needs

and desires of beneficiaries, and almost all have envisaged large-scale commercial farming ventures being established. In practice, if not in rhetoric, the option of using redistributed land for smallholder farming has not been supported. Although subdivision of large farms acquired for land reform is allowed in law, very little has taken place in practice, the default option being a curious form of ‘collective farming’ of single enterprises by groups of beneficiaries, an unintended consequence with predictable problems.

The State has negotiated prices with landowners and approved grants using long-winded bureaucratic procedures, while consultants have been hired to write constitutions for legal entities and develop farm business plans. Landowners unwilling to sell their farms have been able to veto land transfers in specific locations. Lack of capital and ineffective post-settlement support measures have hamstrung the ability of beneficiaries to engage in production, and in the absence of effective area-based planning, land acquisitions have lacked any spatial logic. South Africa’s land reform has thus combined the least effective aspects of both state and market-driven approaches, and it is unsurprising that beneficiaries aiming to farm have struggled to achieve high levels of productivity.

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These problems, together with the slow pace of redistribution, have led to widespread dissatisfaction with the ‘willing seller, willing buyer’ approach. Some political formations have called for the property clause in the constitution to be scrapped, so that land can be expropriated more easily. However, it is not clear that this is in fact a fundamental constraint on land acquisition and transfer on a large scale. There is no evidence that inflated prices have been paid for farms acquired for redistribution (although it is true that this is the case for restitution, where the state is in effect the only buyer). The State’s failures to target appropriate land for purchase and to negotiate good prices, plus the ruling party’s lack of political commitment to land reform (evident in the tiny annual budget for land reform – never more than one percent of the total budget), are more likely candidates.

Government now plans to pass a new expropriation law consistent with constitutional provisions that compensation must be ‘just and equitable’. It will enable valuations to take account of a range of factors other than market value, such as the current use of the property, the history of its acquisition and use, the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and the purpose of the expropriation<sup>2</sup>. An office of a Land Valuer-General is to be established, to oversee valuations for the purpose of rates and taxes as well as to determine compensation following expropriation. These measures might allow land to be acquired for redistribution a little more cheaply than to date, but are unlikely to greatly speed up land reform.

A Pro-active Land Acquisition Strategy (PLAS) was adopted as policy in 2006 and is currently the only available mechanism for redistribution. Here the State has purchased farms and allocated them to applicants on the basis of 3-5 year leasehold agreements, after which the lessee was to be offered an option to purchase the farm.

Funds for investment in farm infrastructure have been made available to PLAS beneficiaries for ‘recapitalisation and development’.

Data on the PLAS programme are hard to come by. Between 2009 and 2012 a total of 882 238 hectares was redistributed to 10 447 beneficiaries, but it is not

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clear exactly how many of these were for PLAS projects. A small number of case studies suggest that PLAS beneficiaries tend to be relatively well-off and have other business interests, but often fail to pay the rent required of them. The Department’s mid-term review of 2012 reports that a number of established (white) commercial farmers are acting as ‘strategic partners’ or ‘mentors’ (264 and 117 respectively) to land reform beneficiaries, and that some have been appointed in order to ‘graduate smallholder farmers into commercial farmers’<sup>3</sup>.

Recent field research on PLAS farms in the Eastern Cape by Ruth Hall and Thembela Kepe indicates that some beneficiaries are caught in a ‘Catch-22’ situation. They have not been granted leases, and have therefore not been serviced or supported by the provincial department of agriculture. They cannot get re-cap funding without entering into a strategic partnership, which many beneficiaries are wary of, but without recap funding one cannot get a lease. Some say: ‘you have to have a lease to be recapped – but you can only afford to pay rent if you have been recapped’. These experiences do not inspire confidence in the capacity of the State to administer leaseholds on land reform farms or provide appropriate support to beneficiaries trying to make those farms productive.

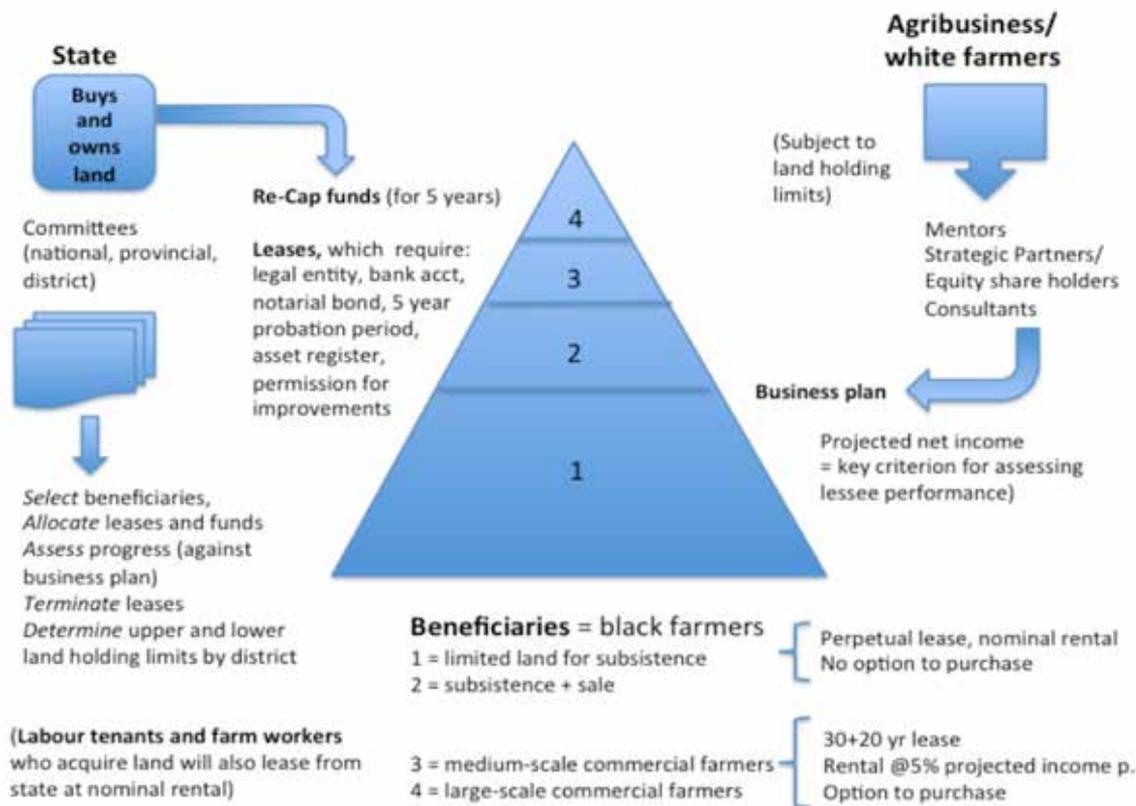
## New policies

Three new policy documents effectively redefine land redistribution policy: the State Land Lease and Disposal Policy (SLDP), the Recapitalisation and Development Programme Policy (RDPP), and the Agricultural Landholding Policy Framework (ALPF) – see Figure 1 below. These build on key elements of existing policies such as PLAS and the Recapitalisation and Development Programme (RDP) and all refer to the 2011 Green Paper, and its notion of a ‘four-tier land tenure system’ in particular, as well as the rural economy chapter of the National Development Plan.

The *State Land Lease and Disposal policy*, the SLDP, applies to farms acquired through PLAS. It is targeted at black South Africans, and defines four categories of ‘farmer’ beneficiaries:

- 1: Households with no or very limited access to land, even for subsistence production.
- 2: Small-scale farmers farming for subsistence and selling part of their produce on local markets.
- 3: Medium-scale commercial farmers already farming commercially at a small scale and with aptitude to expand, but constrained by land and other resources.
- 4: Large-scale or well established commercial farmers farming at a reasonable commercial scale but disadvantaged by location, size of land and other resources or circumstances and with potential to grow.

Figure 1. New land redistribution policies, 2013



Categories 1 and 2 will be leased state land at a nominal rental of R1.00 per annum, without an option to purchase. Labour tenants and farm workers who acquire land in terms of the provisions of existing legislation on security of tenure will also lease from the state, but pay only a nominal rental.

Categories 3 and 4 will be leased state land for 30 years, with leases renewable for another 20 years, and have an option to purchase. The first five years of the initial lease will be treated as a probation period in which the performance of the lessee will be assessed, and new lessees will pay no rental in this period. For categories 3 and 4, the rental thereafter will be calculated as 5 percent of 'projected net income', as set out in an approved business plan. Leases will require beneficiaries to establish a legal entity with its own bank account in order to engage in business activities, have notarial bonds entered on their leases, provide tax clearance certificates, maintain an asset register, and seek permission to make improvements.

The *Recapitalisation and Development Policy Programme* (RDPP) replaces all previous forms of funding for land reform, including settlement support grants for those having land restored through restitution. Its rationale is that many land reform projects have been unsuccessful because of inadequate and inappropriate post-settlement support and are in 'distress', and thus in need of further injections of funds. It will also provide financial support to black farm owners who are not

land reform beneficiaries, and to producers in communal areas. Beneficiaries will be ‘prioritized’ in accordance with the four categories listed in the SLDP, but just what that means is unclear. Again, business or development plans written by either private sector partners or departmental officials will be used to guide decision-making. Funding will be for a maximum of five years.

Beneficiaries of the policy will have business partners recruited from the private sector to work closely with them, as mentors or ‘co-managers’, or within share-equity arrangements, or as part of contract-farming schemes. The definition of ‘co-management’ is confusing, but seems to imply some kind of joint venture for a specified period of time.

*Holdings in excess of the ceiling will be trimmed down through ‘necessary legislative and other measures’. What this means is unclear, but the document indicates it may include purchase (possibly through giving the State the right of first refusal on land offered for sale), expropriation, or equity sharing.*

The *Agricultural Landholding Policy Framework* (ALPF) draws its inspiration from the notion in the 2011 Green Paper that one ‘tier’ of land tenure in South Africa will be ‘freehold with limited extent’. It proposes that government designate maximum and minimum land holding sizes in every district, and take steps to bring all farms either up to the specified minimum size (a ‘floor level’) or below the maximum size (a ‘ceiling’). The rationale is to attain higher levels of efficiency of land use and optimize ‘total factor productivity’.

District land reform committees will determine landholding floors and ceilings by assessing a wide range of variables (including climate, soil, water availability, water quality, current production output, commodity-specific constraints, economies of scale, capital requirements, numbers of farm workers, distance to markets, infrastructure, technology, price margins, and relationships between different on-farm resources). Holdings in excess of the ceiling will be trimmed down through ‘necessary legislative and other measures’. What this means is unclear, but the document indicates it may include purchase (possibly through giving the State the right of first refusal on land offered for sale), expropriation, or equity sharing.

The ALPF document reviews international experience of setting land ceilings as a land reform measure, and in particular the cases of India, Egypt, Mexico, the Philippines and Taiwan. The document points out that in almost all cases the impact of land ceilings has ‘not lived up to expectations’, and in some cases has had almost no effect on disparities in land-holdings. The document also states that ‘optimum’ levels of productivity (i.e. both floor and ceiling) are ‘dynamic and continuously changing upwards and downwards’. The obvious conclusions, that it will prove difficult, if not impossible, to make meaningful designations of maximum and minimum land holding sizes, and that in any case the desired impacts are likely to be negligible, are not drawn.

A broadly similar *institutional* framework for implementation is proposed in each of the three redistribution policy documents. District committees will undertake detailed assessments of applications, select individual beneficiaries, recommend the allocation of leases and recap funds, assess beneficiaries’ progress against approved business or development plans, determine minimum and maximum landholding

sizes, and recommend termination of leases when performance is deemed to be poor. These committees will be composed mainly of officials from different departments and levels of government, but at district level will include a few representatives of the private sector.

For leases, a national committee will make recommendations based on the advice of district committees, and the Director-General of the Department will give final approval. In relation to recapitalisation grants, a national committee chaired by the Minister will make final decisions. In relation to landholding size, it appears that the proposed National Land Management Commission will have final authority.

## Assessing the new policies

**The new policies are inconsistent and unclear as to whom the beneficiaries of land redistribution will be, but close analysis reveals a strong bias in favour of ‘emerging black commercial farmers’.**

Who will benefit from these redistribution policies? The ALPF states that the target for land redistribution over the next six years is 8 million hectares, of which half will be allocated to what it calls ‘smallholders’. Key objectives of the policy are to ‘facilitate the participation of small farmers into mainstream agriculture’ and ‘facilitate the redistribution of land agricultural landholdings to co-operatives and family-owned landholdings’. The RDPP states that ‘smallholder development and support ... for agrarian transformation’ is an imperative, but also that a key strategic objective is ‘rekindling the class of black commercial farmers destroyed by the 1913 and 1936 Land Acts’. It also refers in several places to ‘black emergent farmers’. Not one of these terms is defined.

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The SLDPs’ four-category typology of beneficiaries is based on the sensible idea that they are not homogeneous. But small-scale farmers in categories 1 and 2, who greatly outnumber larger and commercially-oriented black farmers, will pay only nominal rentals and never have the option to purchase the land they occupy. It is not clear why not.

Farmers will be assisted to ‘graduate’ from one category to the next, the implicit assumption being that ‘bigger is better’. People who want secure rights to well-located land for settlement and as a base for their multiple livelihood strategies, a possible route out of rural poverty, are not catered for at all. Key aspects of both the leasehold and the recapitalisation policies seem to assume that ‘emerging’ commercial farmers will be the main beneficiaries, as in requirements that lessees set up companies with bank accounts and enter into strategic partnerships with commercial farmers or private sector companies. Key provisions of the leasehold policy assume that there will be only one lessee per farm, and no mention is made of subdividing large farms to provide for smallholders.

The four-category farmer typology is based on the fallacy that ‘farming scale’ is equivalent to ‘farm size’. These are not the same thing at all. Scale refers to the

relative size of the farming enterprise (which can be large-scale on a small area of land, as in intensive horticulture and livestock production, or small-scale on a large area, as in extensive livestock in an arid zone). Some smallholder farmers in South Africa are fully commercial producers on plots under one hectare in extent (for example in the Tugela Ferry irrigation scheme in KwaZulu-Natal<sup>4</sup>). This kind of farmer could benefit from expanded access to land and water, but there is a poor fit between their needs and requirements and these policies.

The typology that forms the basis of these new policies thus makes little sense, but it is clear that progress towards becoming a large-scale commercial farmer is what is assumed to constitute ‘success’. Given government’s obsession with perceptions of failure, this suggests that applicants for land who are deemed to fall within categories 3 and 4 are likely to be the main beneficiaries.

**The Agricultural Landholdings Policy Framework (ALPF) lacks a sound basis in both theory and in relevant experience in other contexts.**

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South African agriculture is highly diverse in its products, systems and scales of production, partly in response to high levels of environmental variability (both between and within large district municipalities) but also to market realities. Environmental and market conditions are dynamic and fluctuating, and as the ALPF policy document itself admits, ‘optimum productivity’ is a constantly moving target. Successful farmers, both large and small, are those who are able to improvise flexible and effective responses to dynamic variability. To imagine that anyone (let alone

officials who have never farmed themselves) could designate landholding sizes that make economic sense in South Africa today is a dangerous fantasy. I cannot see pragmatists in the ruling party agreeing to implementation of this policy, and it may well be quietly dropped after the 2014 elections.

**The experience to date of strategic partnerships and joint ventures in land reform in South Africa does not appear to have been taken into account.**

Land reform beneficiaries who have been told (or chosen) to enter into strategic partnerships with businesses have had a mixed experience to date. There are some success stories, but a great many failures too. Some of the partnerships established on fruit and nut farms in Limpopo have gone bankrupt, and others continue to struggle to pay any kind of dividend to community members<sup>5</sup>. Small-scale farmers on irrigation schemes have had their fingers burned in poorly-managed joint ventures with tobacco and fresh produce companies. Many of the business plans drawn up by these partners have been far from appropriate, and have not provided useful instruments with which to measure the performance of beneficiaries of land reform. Partnerships and business plans are not a panacea for failure in land reform. Many beneficiaries could no doubt succeed on their own if provided with appropriate advice and start-up capital, as demonstrated in the Besters district. Yet the new policies assume that private sector partners are essential for success. The lessons of recent experience do not appear to inform these new policies.

### **The new policies make unrealistic assumptions about the skills and expertise of government officials in relation to agriculture.**

A key weakness of land reform policy to date has been the inability of land reform officials to engage in planning to support the productive use of transferred land, or to critically assess the plans drawn up for beneficiaries by consultants. The Department has also failed for many years to effectively co-ordinate its programmes with those of provincial departments of agriculture, as well as other relevant departments such as human settlements or water affairs. Recent experience with the PLAS programme indicates that these problems have not been overcome, and that the administration of leases and recapitalisation grants continues to be beset with problems.

Is it credible, then, that officials will be able to undertake the varied and technically complex tasks required of them by the new policies? Perhaps they might do so in the long run, if they receive intensive training and accumulate experience under the supervision of skilled senior staff. In the short term, the answer must be 'no'.

Does this mean that a more market-based approach to land reform, and a correspondingly smaller role for the state, is preferable? Not at all. Market forces on their own tend to privilege the better-off, and only deliberate interventions in favour of the poor will ensure we have a land reform programme that fulfils its potential to help address poverty and inequality. But this requires a capable state guided by a commitment to social justice, and one free of corruption, which exacerbates the problem of elite capture. Creating such a state is a key challenge in South Africa today.

### **Conclusion**

Since 2009 policy documents on land reform have been replete with fine-sounding phrases on the need for 'agrarian transformation', defined as 'a rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community', and the creation of 'vibrant, equitable and sustainable rural communities'. Smallholder farmers and the rural poor are often named as key beneficiaries. This populist discourse masks the reality that the rural poor, and potentially highly productive, small-scale farmers are not really intended to be the main beneficiaries of government's land redistribution policies, which, as in other sectors such as mining, are aimed at promoting the interests of an emergent black bourgeoisie.

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#### NOTES

- 1 See Fact Check Land Reform No. 4, 'Many land reform projects improve beneficiary livelihoods', Institute for Poverty, Land and Agrarian Studies, 2013 ([www.plaas.org.za/plaas-publication/FC04](http://www.plaas.org.za/plaas-publication/FC04))
- 2 See section 25 (3) of the constitution.
- 3 Department of Rural Development and Land Reform, Mid-term Review, 2012: 20.
- 4 Ben Cousins, 2013. "Smallholder irrigation schemes, agrarian reform and 'accumulation from above and from below' in South Africa", *Journal of Agrarian Change*, 13(1): 116-39.
- 5 Edward Lahiff, Nerhene Davis and Tshililo Manenzhe, 2011. *Joint ventures in agriculture: lessons from land reform projects in South Africa*. London: International Institute for Environment and Development.