Legacy of the 1913 Natives Land Act – Taking up the challenge

Dr Theo de Jager is the Vice President of AgriSA. Dr de Jager obtained his BA Political Science from Stellenbosch in 1984, BA (Hons) Philosophy & MA Philosophy in Pretoria (Cum Laude) in 1985 & 1986 respectively. He completed his D Phil Philosophy in Pretoria in 1988 on "Black Consciousness". Dr de Jager has farmed in the Tzaneen district since 1997

At the marking of the centenary of the 1913 Land Act, we as an organisation have moved past trying to evaluate the merits and demerits of the particular Act. We could perhaps say today that we are a new generation of farmers, or that the Act was passed by the Union Government under British auspices 100 years ago. But we won't. We will only say that in AgriSA there is a clear mandate and commitment from all farmers' associations and 24 commodity organisations to roll up our sleeves and work towards rectifying the wrongs of the past. But that must be done in an orderly way.

Land is not a farm. A farm is much more than just land. It is developed on land but it also entails capital investment, technology and expertise. It is a business. There is no way South Africa can allow the land issue to be addressed as if the agricultural and commercial investment on the land has no value, or is of less importance to the wellbeing of our nation than the ownership of the land itself.

Land reform in SA has reduced too many farms to mere parcels of land, destroyed too many agricultural businesses in favour of subsistence farming, and moved too far away from commercial agriculture to low technology smallholder farming.

In this regard commercial farmers are highly irritated with what we perceive to be an over- romanticisation of the smallholder farmer by NGOs and populist politicians alike. There is a place for the smallholder farmer if he or she can fit into a value chain, knowing exactly where their inputs would come from and how they would market their produce. Without a clearly defined place in a value chain, smallholder farming is nothing but a poverty trap.

Farmers operate within the context of the reality of the economies of scale all over the world. Our profitability is directly linked to the advantages of scale. Large farmers are growing bigger all the time, while small farmers are dropping out of the industry. In Europe, the family farm is maintained by vast subsidies to agriculture, a luxury which South Africa cannot afford.

Some of the best agricultural land is in the communal areas. The problem is that there is little agricultural investment in those areas, no irrigation schemes, no fences, no processing plants, no value chain infrastructure. Although some of the best, most experienced black farmers make a living in those areas, they have basically no access to financing. Their lack of ownership of the land renders them without adequate collateral, and thus without access to capital to develop the land to competitive farming enterprises.

Current land reform programs are not getting us there; on the contrary, they are adding to the inequalities and polarisation of the industry.

The communal areas are not that much different from the deep rural areas elsewhere in Africa, where hundreds of South African commercial farmers have settled over the last few years. There is also no private ownership, and the commercial farmers have to farm alongside and in partnerships with local small holders in Mozambique, Congo-Brazzaville, Zambia and Tanzania. In each of these countries the commercial farmers are quick to involve agri-businesses like Afgri, Senwes, Bunge or Profert, who bring in the equipment, the inputs, the expertise and value chain assets like storage and processing facilities. They usually finance production too. These new value chains introduce local smallholders to modern technology, create the space for them to produce a marketable surplus and promote them to the commercial arena.

Land reform must be about more than merely the transfer of land and rectifying injustices of the past. It will have no meaning or sustainability if it does not entail the transformation of the sector and the development of commercial farmers along with the transfer of the land.

Current land reform programs are not getting us there; on the contrary, they are adding to the inequalities and polarisation of the industry.

The way the restitution process has been implemented has probably done more damage to commercial agriculture in South Africa than the Anglo-Boer war. It has created massive uncertainty, with thousands of farms (often whole districts or industries) caught up in the grip of unfinished claims, and no-one – neither the current owner nor the claimants – knows who will own the farm in a year from now. So for years no further investment or development takes place on those farms.

Government's decision to re-open the lodgement of land claims was just about the worst news the industry could receive. Given the fact that government has, after 15 years, not managed to compile a complete list of claims filed in the first round, and given the disastrous administration of those claims and accompanying freeze-up of agricultural development in areas with a heavy load of claims, the re-opening makes no economic sense. There is simply no commercial success story from any restitution farm from Cape Town to Musina, and not a single land claims beneficiary is being financed by a bank.

Given government's poor track record of finalising land claims, and given the outstanding 13 000 farms gazetted under restitution claims where there has not been any engagement with the land owners over the last decade, there is little hope that this part of land reform will positively contribute to rural development or poverty alleviation. The uncertainty affects the value of farms, financing, investment and jobs where we need it most: in the poorest corners of rural South Africa.

The redistribution program has yielded much more success. In this program the beneficiaries are individuals or families who are serious about farming – not communities. Land is not transferred to the beneficiaries, though, but to the state. Beneficiaries only have relatively short term leases, and very little security of tenure. They are delivered to the state and all its administrative bungling for production financing. It is bound to lead us into a future where we will once again have two categories of farmers; white ones who are land owners, financed by the financial institutions on the open market, and black ones who are, at best, *bywoners* on leased state land, financed on an *ad-hoc* basis by the state.

There is no mention of how the debt, for which the farm serves as collateral, would be shared, or how the development and infrastructure would be shared, or how to deal with farms where hundreds of workers each have more than twenty years of service, or with enterprises on leased land.

Tenure security of farm workers and farm dwellers is a third leg of land reform, and legislation such as the 1997 Extended Security of Tenure Act has done little to accomplish what it was meant to. Rather, the oversimplified 'one size fits all' approach has had unintended consequences, such as the massive demolishing of farm accommodation, hesitance of farmers to employ workers who need accommodation on the farm and a near total freeze on the development of farm worker housing and related services. Farmers who were faced with large numbers of established farm dwellers who demanded rights and services on their land had ample time to sell their problem to the state, who passed it on to beneficiaries of the other two legs of land reform.

When, by 2012, government admitted failure in securing 'tenure and other relative rights' of farm dwellers and workers, it resorted to a radical proposal that, in line with the Freedom Charter dating from the heydays of socialist dreaming in the 1950's, land should be shared by those who work it. The Department of Rural Development and Land Reform displayed their total lack of understanding of the economics of commercial agriculture by proposing that farm workers be given a percentage of the farms on which they work, equal to the number of years they have worked on it. There is no mention of how the debt, for which the farm serves as collateral, would be shared, or how the development and infrastructure would be shared, or how to deal with farms where hundreds of workers each have more than twenty years of service, or with enterprises on leased land.

What is clear is that the uncertainty around compensation is extremely concerning to investors, including the farmers themselves. Why would anyone renew an orchard or develop new land if he is not sure that he will get his money back should his number come up for land reform?

Being confronted by this kind of proposal, many farmers surprised themselves by how well they could cope with fewer labourers.

Agricultural financing was eroded further by the ANC's decision in December 2012 in Mangaung to scrap the 'willing buyer, willing seller' principle, blaming it for the poor performance of the Department of Rural Development and Land Reform. Many academic scholars, political commentators and business analysts have published their findings on the failure of an incompetent, corrupt buyer, obviating the need to scrap the particular principle. So called 'discount clauses' allowed for in Section 25 of the constitution will be calculated and deducted from market value compensation in land reform. How exactly the discount for 'the purpose of acquisition', or 'current use of the property' would be calculated, is still a mystery.

What is clear is that the uncertainty around compensation is extremely concerning to investors, including the farmers themselves. Why would anyone renew an orchard or develop new land if he is not sure that he will get his money back should his number come up for land reform? More than that, the willing buyer, willing seller principle has not been sacrificed along with investor confidence in the sector for 10% or 20% discount on market value. Government wants 40% to 50% or more!

The total value of commercial farmland in SA is estimated to be around R168 billion. It serves as collateral for agriculture's debt of around R94 billion. Paying only 50% - 60% of market value to land owners would mean that the banks and agribusinesses as bond holders are covered for their exposure, while the average farmer will be left naked!

There are a number of workable and sustainable alternatives which had been proposed on a menu-basis to government, without much success as yet:

> There is the so-called 'Zuma Plan', described in the National Development Plan by the National Planning Commission and announced by President Zuma at AFASA's 2012 annual conference. It proposes that the state would pay half the price of 20% of the farms identified in each district, and the remaining farmers would pay the other half. In exchange, a farmer would get full BEE-status and be left alone to farm. For many of the largest farming enterprises this is a viable option.

AgriSA proposed that the remaining 80% of farmers in each district buy shares in the 'transferred' farms, where they act as partners/mentors until the beneficiary can buy them out as the farm makes a profit.

The NPC also proposed that farmers buy land bonds to finance land reform in the longer term.

Another proposal was that farmers can sell their farms at 60% of market value along with a long-term lease agreement with the previous owners of the land, bringing about immediate transfer and empowerment over time. The full value of the 60% plus the lease agreement would be registered at the deeds office to maintain market value. These leases would be transferrable and can be sold, inherited or set up as collateral at a bank to provide enough security for financing.

Farmers should be allowed to choose from a menu of options, thereby contributing to land reform and the transformation of the sector. Further options could be added to the list.

There is little hope that the composition and fixed personal interests of the technocrats in the Department will change. RSA does not have the capacity in the department to make land reform work. There is no economic reason why the administration of land reform and the identification, valuation and acquisition of farms could not be privatised to a reputable international auditing company or a commercial bank. It will save billions that are now lost to corruption, nepotism and ineptitude, and it would ensure private sector involvement in the transformation of the sector.

AgriSA has proven that its commodity organisations like the National Wool Growers Association, Grain-SA and Milk Producers Organisation can achieve close to a 100% success rate in promoting beneficiaries of land reform to competitive commercial farmers in the global arena. There is no alternative to a public-private-partnership when it comes to successful land reform, and yet the political and personal gains for officials in the relevant departments seem to be too limited for them to embark on such partnerships. The 2014 general elections are looming, and farmers have prepared to hold their breath, face the radical expectations which will imminently be raised to buy votes against the background of poor service delivery, knowing they will have to foot the bill the day after.