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# South Africa's Land Reform Crisis: Eliminating the Legacy of Apartheid

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# South Africa's Land Reform Crisis

## Eliminating the Legacy of Apartheid

*Bernadette Atuahene*

UNDER COLONIALISM and apartheid, the ruling white minority stole vast amounts of land from black Africans in Zimbabwe and South Africa. Reclaiming this land became an important rallying cry for liberation movements in both countries; but in the years after white minority rule ended, it was extremely difficult for the new regimes to redistribute the land fairly and efficiently. In recent years, as the unaddressed land inequality in Zimbabwe became a pretext for President Robert Mugabe's demagoguery and led to Zimbabwe's demise, many observers have asked: Could South Africa be next?

When Nelson Mandela took power in South Africa in 1994, 87 percent of the country's land was owned by whites, even though they represented less than ten percent of the population. Advised by the World Bank, the ruling African National Congress (ANC) aimed to redistribute 30 percent of the land from whites to blacks in the first five years of the new democracy. By 2010—16 years later—only eight percent had been reallocated.

In failing to redistribute this land, the ANC has undermined a crucial aspect of the negotiated settlement to end apartheid, otherwise known as the liberation bargain. According to Section 25 of the new South

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African constitution, promulgated in 1994, existing property owners (who were primarily white) would receive valid legal title to property acquired under prior regimes, despite the potentially dubious circumstances of its acquisition. In exchange, blacks (in South Africa, considered to include people of mixed racial descent and Indians) were promised land reform. But the new government upheld only one side of the liberation bargain: South African whites kept their property, but blacks still have not received theirs. Political apartheid may have ended, but economic apartheid lives on.

THIS LAND IS OUR LAND

SOUTH AFRICA'S failure to rectify its land inequality is like a sea of oil waiting for a match. In one of the most impressive public opinion studies ever conducted in the country, in 2009 the political scientist James Gibson surveyed 3,700 South Africans and found that 85 percent of black respondents believed that "most land in South Africa was taken unfairly by white settlers, and they therefore have no right to the land today." Only eight percent of white respondents held the same view. Gibson's most alarming finding was that two of every three of these blacks agreed that "land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country"; 91 percent of the whites surveyed disagreed.

According to Gibson's data, most blacks, whether they live in rural or urban areas, see the land as stolen and want it back even if redistribution will provoke political unrest. In spite of these findings, not everyone expects instability to actually materialize, because land inequality in South Africa does not affect livelihoods as it did in Zimbabwe. For example, only about three percent of South Africa's GDP is based on agriculture, whereas before the 2000 land grabs in Zimbabwe, agriculture contributed about 20 percent of that country's GDP.

Such optimism overlooks two important considerations, however. First, although agriculture does not contribute significantly to South Africa's GDP, about 35–40 percent of the nation's population resides in rural areas, so access to land is necessary for the survival of many poor

families. Second, unlike other complex social issues in South Africa (such as unemployment and inadequate health care), land inequality has roots that are easy for South Africa's majority to understand. The refrain that "whites stole our land and now we deserve to get it back" is a simple yet rhetorically powerful one that resonates among marginalized, poor populations in both rural and urban areas. Theft of land has come to symbolize the more extensive theft of wealth that occurred under colonialism and apartheid. It is possible that one day a charismatic populist leader could use the land issue to rally the vast army of poor and frustrated black citizens from both rural and urban areas to reclaim the stolen wealth, making the focal point all whites and not, as in Zimbabwe, primarily white farmers.

Yet instead of equitably redistributing land, the ANC has underfunded land reform efforts, implemented Section 25 of the constitution in a way that reinforces inequalities between the races, and failed to assist the beneficiaries of the land reform in obtaining the capital and skills necessary to use their newly acquired land productively.

According to South African President Jacob Zuma, land reform ranks at the top of the ANC's agenda. In 2009, Zuma said, "During the election campaign, we made it clear that rural development and land reform would be one of our key five priorities." And in an April 2011 speech, he declared, "We are committed to seeing that those communities that were wrongfully evicted during the apartheid era receive just compensation for their loss. Our aim here is to ensure that poverty alleviation goes hand in hand with the return of land."

But Zuma has failed to put his money where his mouth is. In 2010, the Land Restitution Commission, an agency pivotal to the land reform efforts, placed a moratorium on buying land claimed under the restitution program because it had run out of money to honor those sales agreements it had already entered into with landowners. The commission asked the South African Treasury for 5.3 billion rand (approximately \$757 million), partly to honor outstanding commitments to landowners, but it was allocated only 1.9 billion rand (about

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\$271 million). This has led several landowners to sue the commission for failing to honor its sales agreements. Even worse, it has sent the message that the ANC is not serious about land reform.

#### REINFORCING INEQUALITIES

IN THE process of trying to remedy inequality, the ANC has instead exacerbated it. The apartheid government often took land from black communities without just compensation and transferred it at nominal cost to white farmers. If the ANC decides to return a particular parcel of land to a dispossessed black community while the white farmer to whom the apartheid government sold it is still alive, the state is constitutionally mandated to pay the farmer just compensation, despite the unfair circumstances under which the farmer acquired the land in the first place. Yet blacks do not get just compensation for land previous governments stole from them. The constitution states that South Africans whose property was dispossessed after 1913 as a result of racially discriminatory business practices are entitled “either to restitution of that property or to equitable redress.” By 2008, however, 70 percent of the beneficiaries of the land restitution program had received no land at all, only small, symbolic financial awards that bore no relation to the past or current market value of their confiscated property. This is not equitable redress.

For instance, the Land Restitution Commission paid each dispossessed landowner in Paarl, a scenic town in the Western Cape’s wine country, 40,000 rand (about \$5,700), whereas it paid six current landowners in the same province 14.5 million rand (about \$2 million) for about 250 acres of land. From its inception in 1995 through March 2008, the commission spent 7.8 billion rand (about \$1.1 billion) to acquire property for land reform, which was paid mostly to white farmers, but only 4.9 billion rand (approximately \$700 million) to distribute as financial compensation, which was paid primarily to dispossessed blacks. Such disparities only reinforce apartheid-era inequalities. To be sure, the South African government has a limited budget and many other important priorities, such as health care and education. But if the state cannot afford to give both blacks and whites just compensation, then both blacks and whites should receive only symbolic compensation.

Another problem with the land restitution process is the commission's failure to follow Section 25(3) of the constitution, a provision deftly negotiated by the ANC to ensure land reform is fair for both blacks and whites. This provision requires the state to compensate present landowners based on fair market value but also to reduce the price paid based on several equity-enhancing factors, such as direct state investment and subsidies for acquisition and capital improvements on the property. If, for example, a white farmer acquired land from the apartheid government at a greatly reduced price but then made capital improvements to the land, then when that land is expropriated, the postapartheid state is required to pay the farmer fair market value for the capital improvements but can discount the underlying land because it was not acquired at market price. Yet according to a recent interview given by Thozzi Gwanya, former director general of the Department of Rural Development and Land Reform, when the commission acquires land from willing sellers, it pays the fair market value without discounting the price based on the equity-enhancing factors. Gwanya noted that the commission does not even research the factors to allow it to negotiate a just price.

The problem is compounded further by the fact that when the government does redistribute land, it does not give new landowners the support they need to succeed. Poor black farmers require financial and technical support to access markets, credit, technology, infrastructure, and training. But as research conducted by the Program for Land and Agrarian Studies at the University of the Western Cape has shown, the state routinely fails to give newly resettled communities even the basic irrigation tools and electricity resources they need. The state instead gives large, resource-poor communities land that was formerly used by single farmers for large-scale, capital-intensive commercial agriculture. This is a recipe for disaster.

Providing resettled communities with access to capital, infrastructure, and the training necessary to take over a commercial agricultural enterprise requires a significant investment of state resources. A

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The ANC must realize that aggressive land reform would be far less destabilizing than a violent revolt.

less costly alternative would be for the state to abandon the idea of redistributing capital-intensive agribusinesses and give communities land for subsistence farming, which can be done without significant government intervention. The dream of seamlessly transferring a thriving citrus farm, for example, from a white farmer to a black community is dead. The state must accept this and begin to look for new solutions.

#### NO OPPOSITION, NO REFORM

THE ANC's failure to address the needs of its political base by allocating more funding for land reform, giving equitable compensation, and providing support for new landowners strikes many political observers as puzzling. But the government can afford this failure because the short-term political costs of inaction are low. The ANC totally dominates South African politics, so it faces no real competition for its constituents' votes. It controls 66 percent of the National Assembly, eight of the country's nine provinces, and five of the six big-city governments. During the last election, in 2009, there was hope that the Congress of the People (COPE), a party started by breakaway ANC members opposed to Zuma, would provide a viable alternative, but COPE only managed to secure eight percent of the seats in the National Assembly and has since effectively dissolved. There is no one to punish the ANC if it fails to deliver on land reform.

The danger, however, is that over time, leaders within the ANC who advocate radical land reform policies will become increasingly powerful and, for personal or political purposes, will encourage the party to exploit the issue just as Mugabe and his ZANU-PF (Zimbabwe African National Union-Patriotic Front) did in Zimbabwe. In fact, last year, Julius Malema, the controversial yet popular president of the ANC Youth League, visited Zimbabwe and lauded "Comrade Bob" for successfully returning much of that country's farmland to its "rightful owners." Malema said, "In SA we are just starting. Here in Zimbabwe you are already very far. The land question has been addressed. We are very happy that today you can account for more than 300,000 new farmers against the 4,000 who used to dominate agriculture." For the moment, Malema and his like-minded comrades



remain at the fringe of the ANC, and the party has no need to rely on manipulative populist tactics. But both things could change.

Moreover, although the ANC may be politically invulnerable now, it is not economically invulnerable; indeed, it relies on capital from white South Africans and foreign investors to maintain economic growth. If the ANC pursues policies that alienate these sources of capital, there could be disastrous economic consequences. This is a lesson the party learned early on. In his book *Thabo Mbeki and the Battle for the Soul of the ANC*, the South African journalist William Gumede notes that shortly after his release from Robben Island, Mandela attended a private lunch with prominent businesspeople where he said that only nationalization could address the inequalities created by apartheid. Soon thereafter, the Johannesburg Stock Exchange's all-gold index plunged, falling by five percent.

Thus, Mandela changed his tune, telling business leaders in Pittsburgh, Pennsylvania, in 1991, "Let me assure you that the ANC is not an enemy of private enterprise. . . . We are aware that the investor will not invest unless the security of that investment is assured. The rates of economic growth we seek cannot be achieved without important inflows of foreign capital. We are determined to create the necessary climate that the foreign investor will find attractive." The ANC's fear of upsetting markets and alienating its sources of capital explains the disparities in the compensation for property paid to current owners (who are mostly white) and the compensation for dispossessed owners (who are mostly black).

Markets may indeed react adversely if the ANC moves away from its policy of purchasing land at market prices from willing sellers and adopts a more aggressive land reform policy that relies on court-based expropriation consistent with Section 25(3) of the constitution. But proceeding slowly on the grounds that some justice must be sacrificed for the sake of stability risks creating major political turmoil down the road. If nothing is done to correct the fact that whites presently own about 77 percent of the land while constituting less than ten percent of the population, unrest could result. The ANC must realize that aggressive land reform would be far less destabilizing than a violent revolt.

MAKING LAND REFORM WORK

THE INTERNATIONAL community has also been slow to help out, despite the potential explosiveness of the issue. Gwanya, the former director general of the Department of Rural Development and Land Reform; Judge Fikile Bam, president of the Land Claims Court; and Blessing Mphela, former chief land claims commissioner, have all agreed that the primary obstacles to achieving the government's land reform objectives are bureaucratic inexperience, ineffective policies, and organizational inefficiency.

The example of the Popela community in the northern Limpopo Province is a case in point. The Popela community is resource poor, and its land rights were progressively eroded under colonialism and apartheid. The community had full rights to use its ancestral land until 1889, when the British expropriated it and gave title to a white settler who forced community members to provide free labor if they wanted to remain there. In 1969, the community was stripped of all its formal rights to use the land. In a landmark decision delivered in June 2007, the South African Constitutional Court ruled that certain community members were entitled to restitution of their land rights. Four years later, however, the Land Restitution Commission, which was charged with implementing the court's decision, has yet to purchase the land as mandated by the court.

According to the official managing the case, there are several reasons for the long delay. One has to do with problems getting land valuations and obtaining various approvals. In addition, because of the commission's failure to spend money allocated for prior projects, it could not get additional money from the national budget for new projects (including the Popela claim), and it is prohibited from transferring monies allocated for old projects to new ones. The net result is that the Popela community has been forced to pay the price for bureaucratic incompetence and rigid regulation.

The international community could help South Africa address these deficiencies. The country's government officials are well aware of the lack of coordination between relevant agencies, ineffective procedures, and inefficient processes that are hampering the land reform program, but they do not know how to solve these problems.

### *South Africa's Land Reform Crisis*

They need the help of consultants with experience in evaluating dysfunctional government agencies and providing viable solutions. Senior government officials leading the land reform efforts would also benefit from a well-crafted, donor-funded international exchange program that allowed them to study past land reforms in Brazil, South Korea, Taiwan, and several eastern European nations with relevant experiences. Furthermore, those bureaucrats serving as the foot soldiers would benefit from intensive training programs focused on how to most effectively implement existing policies. The international community could fund international experts to develop a series of courses designed to give these bureaucrats the skills they need to succeed. The ANC would undoubtedly welcome these interventions because the assistance would not involve more aggressive policy changes that could cause markets to react adversely; instead, the assistance would ensure that the existing programs were run more efficiently and effectively.

Whatever policies the ANC adopts, the bottom line is that land reform in South Africa must move quicker and more efficiently. Thus far, South African citizens have waited patiently for the ANC to transfer land from whites to blacks to remedy the massive land theft that happened under colonialism and apartheid. But without significant progress, there may come a point when these citizens will tire of waiting and take matters into their own hands. The outside world played a significant role in helping bring about a democratic South Africa; it should once again lend a hand to put the legacy of apartheid to rest at last. 🌍