

How to safeguard the future of commercial farming in South Africa

This policy brief was produced by the IRR at the request of the Transvaal Agricultural Union – South Africa and many commercial farmers within the country

Introduction

South Africa's 35 000 remaining commercial farmers (down from 120 000 in 1994) are vital to the food security of 54m South Africans (up from 40m in 1995). They also contribute 3.9% of the country's gross domestic product (GDP), employ more than 650 000 mostly unskilled people, and help boost exports and hold down the current account deficit. They generally have good relationships with their farm workers and pay not less than the statutory minimum wage. Many have also done all they can to mentor new black farmers and generally help the process of land reform. Commercial farmers underpin the rural economy and the prosperity of small rural towns. This means that increased investment in commercial agriculture is vital to the rural economy and the prosperity of all rural people.

Despite this, South Africa's commercial farmers are under attack. They already face a raft of damaging policies that threaten the success of commercial farming. Now many of these policies are being ratcheted up, putting the future of farming still further at risk. This document explains why this is happening and what the farming community must do to safeguard its future.

The failure of the Government's land reform efforts

Many farmers have long accepted the need for land reform to overcome the ongoing effects of past racial laws prohibiting the purchase of agricultural land by black people and the forced removal of more than 1.1 million Africans from "white" rural areas in the 1960s and 1970s. However, land reform to date has largely been a dismal failure.

Since 1994, some R69bn in real terms has been spent by the State on buying some 7 million hectares of land for redistribution or restitution, against a target of some 26 million hectares. The amount already spent is very close to the net value of all agricultural land in the country (R71bn), yet 19 million hectares still remain to be transferred. In addition, between 70% and 90% of all land reform projects have failed, beneficiaries being unable to produce any marketable surplus. Productive land has thus been taken out of use without any resulting benefit to anyone in jobs, income, or agricultural production. In addition, land under claim commonly remains "frozen" for years while claims are investigated, settlements reached, and prices agreed to by the State are finally (generally also after much delay) paid out to farmers.

Overall, land reform has been so badly implemented that it has probably done more damage to commercial farming than the Anglo Boer War. Yet land reform is also a sham in that:

- it exaggerates the extent of land hunger (in fact, only some 8% of South Africans want land to farm);
- it prevents black South Africans from gaining individual ownership of farming land (almost all transferred land goes to the State, the chiefs, or community trusts) and does not in fact aim at creating a new class of black commercial farmers; while
- it ignores the most important land reform requirement, this being the need to give individual ownership to some 18m people with insecure customary land-use rights in the former homelands.

Despite these many problems, land reform is now being stepped up through legislation recently adopted or now in the policy pipeline.

Laws and policies that threaten the future of commercial farming

Much of the threat to commercial farming comes from a spate of new laws and policies, six of which are outlined below.

1. *Land Restitution Amendment Act of 2014* (effective July 2014)

The land claims process has been re-opened, with a new five-year window running from July 2014 to June 2019, during which some 379 000 new claims are expected to be lodged. These claims will be in addition to the 80 000 or so lodged in the first window period (to December 1998), some 13 000 of which still remain to be resolved.

The 379 000 new claims could cost R179bn to settle, but the annual restitution budget is less than R3bn a year. In addition, both the Department of Rural Development and Land Reform (the land department) and the Land Claims Commission lack the administrative capacity to handle all the new claims, which are likely to drag on for decades and make for great uncertainty as to the title of commercial farmers to all or part of their land.

2. *Property Valuation Act of 2014* (effective August 2015)

A state official, the valuer general, has been empowered to value all property (including both land and any accompanying movables) that has been identified for land reform purposes. Where farms are under claim, this statute will help the Government expropriate them as working entities and for less than market value.

3. *Regulation of Land Holdings Bill* (mooted in the Green Paper on Land Reform in 2011, and still to be approved by the Cabinet for tabling in Parliament).

This bill will introduce ceilings on farm sizes, which are likely to be set (in the beginning, at least) at 1 000 hectares for a small farm, 2 500 hectares for a medium one, and 5 000 hectares for a large farm. In exceptional circumstances (for example, to cater for timber or game farms), a maximum of 12 000 hectares may be allowed. In many instances, these ceilings will erode the economies of scale necessary for successful commercial farming.

In addition, once the principle has been accepted that the Government can decide farm sizes, the ceilings are likely to be reduced. Where a given farm exceeds the relevant ceiling, any excess land is likely to be expropriated by the Government.

4. *50:50 proposal* (under investigation through a few pilot studies)

The land department has proposed that 50% of all commercial farms be transferred to long-serving farm workers. Compensation for this 50% will not go to the farmer but will be paid into a trust jointly owned by both the farmer and his new owner-workers.

5. *Agri Land Bill of 2014* (public comment obtained, bill still to be approved by Cabinet for tabling in Parliament)

The Department of Agriculture, Forestry, and Fisheries (DAFF) has put forward the Preservation and Development of Agricultural Land Framework Bill of 2014 (the Agri Land Bill), under which all agricultural land will vest in DAFF as “custodian” for the people of South Africa. This wording could perhaps result (as under the Mineral and Petroleum Resources Development Act of 2002, which has the same formula regarding the State’s custodianship of mineral resources) in the effective expropriation of farming land without compensation.

In addition, the Agri Land Bill will require all high potential cropping land to be used solely for production for human consumption. All farmers will need state approval (through extraordinarily costly and complex new bureaucratic procedures) for any rezoning or sub-division, under rules so broad they could require state approval for a shift from one kind of agricultural use to another. Restrictions on the use of pesticides and genetically modified (GM) crops could also be introduced.

Under the Agri Land Bill, the “right to farm” will also be made subject to ministerial regulation. Under this provision, farmers could in time be required to obtain farming leases or licences from the State, which could be made dependent on them fulfilling various (and shifting) black economic empowerment (BEE) requirements. (If this transpires, it will give effect to a demand by the Economic Freedom Fighters or EFF for the State to take custodianship of all agricultural land and then lease it out to farmers.)

6. *Expropriation Bill of 2015* (currently before Parliament)

This bill will allow all national and provincial departments, all municipalities, and hundreds of other organs of state to expropriate land, movables, and other assets either “for public purposes” (such as the building of a road) or in “the public interest” (which the Constitution defines as “including the nation’s commitment to land reform”).

On its current wording, the Bill would work as follows. The land department could decide it wants to expropriate a number of farms, which it will then lease to black farmers under the State Land Lease and Disposal Policy (SLLDP). The department must start by negotiating with the farm owners for the purchase of their land at, say, 70% of market value, as recommended by the valuer general. If negotiations fail, the land department

may issue a notice of its intention to expropriate, under which it may investigate the value of the land. It must also invite objections to its proposed expropriations, but can reject these without giving reasons.

Once these initial procedures are complete, the land department may serve notices of expropriation on all the affected farm owners. Under such a notice, ownership will pass automatically to the land department on the “date of expropriation” set out in the document, which could be the day after its service. (The only relevant time limit in the Bill is that ownership cannot pass the day *before* the notice was served.) The right to possess the property could pass to the land department on the following day. The land department may again offer 70% of market value as compensation. If a farm owner does not sue for more within 60 days of being invited to do so, he will be deemed to have accepted this amount. If he does litigate and a court awards him the same amount or less, he must pay the land department’s legal costs, which will be deducted from the compensation owing to him – leaving him only such balance as remains.

The Bill’s present wording also seeks to prevent the courts from ruling on the validity of the expropriation: on whether, for example, it is objectively either rational or in the public interest. It also limits access to the courts on the compensation payable through the “deeming” provision outlined above. The Bill is thus in conflict with Section 34 (the right of access to court), as well as Section 25 (the property clause, with its various requirements for a valid expropriation), and Section 33 (the right to just administrative action, which prohibits the land department from acting as “judge and jury in its own cause”). Where farm houses are included in the land expropriated, farm owners cannot be evicted from their homes without court orders (as required by Section 26 of the Constitution), but the Bill does not acknowledge this.

Our concerns about Agri SA

Agri SA is a very important role player. However, the IRR is concerned about some of the positions adopted by Agri SA, as these suggest that it does not fully comprehend the threat to commercial farming and may not be doing enough to protect farming interests.

For example, Agri SA has welcomed the Expropriation Bill and rejected criticisms of its unconstitutionality. Thanks mainly to the IRR’s sustained objections, the Bill may now be amended to give the magistrates’ courts jurisdiction to rule on both the validity of an expropriation and the amount of compensation payable. However, even if these changes are made, this will still not be enough to protect property owners, either black or white.

On general principles of constitutional interpretation, the onus lies *on the State* to prove that all constitutional requirements for a valid expropriation have been met. It is not the job of the expropriated owner to show that these criteria have not in fact been fulfilled. Moreover, the State must provide this proof *before* it proceeds with a disputed expropriation, as the

constitutional guarantees otherwise have little practical significance. Great harm may also be done by an unconstitutional expropriation – and this harm might not be easy to reverse.

The IRR has thus proposed an alternative expropriation bill, under which:

- the State must prove the validity of a disputed expropriation before it proceeds with it;
- compensation must begin with market value, less the four discount factors listed in the Constitution, but must also include an amount to make good all losses directly resulting from an expropriation (such as moving costs and lost future income); while
- payment must be made in full before the State takes ownership, failing which the relevant notice of expropriation becomes invalid and falls away.

These changes would make it more difficult for the land department – or any other organ of state – to abuse the power to expropriate.

Agri SA has failed to make or support these important changes, perhaps because it sees the need to maintain a good relationship with the Government as more compelling. Good relations with the State are, of course, desirable. But the IRR's experience, over several decades, is that appeasement does not work and that bad policy must always be opposed.

Propaganda against farmers

Farmers face not only a growing threat to their property rights, but also a barrage of adverse propaganda. This begins with repeated exaggerations of the ratio of white to black land ownership, which no longer stands at 87:13 but rather at around 65:35. Also relevant are constant accusations that farmers abuse and assault their farm workers, that they pay even less than the statutory minimum wage, and that they have illegally evicted more than a million farm residents since 1997. (By contrast, official figures put the total number of evictions, in the period from 1997 to 2009, at 826.)

Farmers have also repeatedly been accused of artificially inflating land prices, while the willing seller/willing buyer principle has often been identified as the main obstacle to successful land reform. Increasingly, farmers are now also being accused of having “stolen” their land, which means they have no valid claim to it and merit no compensation for it at all.

The purpose of this stigmatisation is to turn public opinion against farmers, so that the Government can more easily use its laws to target farmers, interfere in their businesses and, over time, take all or part of their farms.

Why is the Government targeting farmers in this way?

Many farmers find it difficult to believe that the Government could intend to harm a sector that is vital to food security, offers employment to the unskilled, and helps (through its

exports) to reduce the current account deficit. But the African National Congress (ANC) and its allies in the Congress of South African Trade Unions (Cosatu) and the South African Communist Party (SACP) care little for such practical realities. Their actions are instead guided by ideology and their commitment to a Soviet-inspired national democratic revolution (NDR). It is thus important not to be naïve – as Zimbabweans were – and not simply to accept the Government’s word when it says it has the best interests of commercial farming at heart.

Despite the collapse of the Soviet Union, the SACP – which controlled the ANC throughout the exile years – still continues to dominate the ruling party. Some 40% of President Jacob Zuma’s cabinet ministers and their deputies are known present or former members of the SACP. Others are surely also communists, even though their membership of the party has never been acknowledged. The three ministers driving the most damaging land laws and bills are all known or likely communists: Gugile Nkwinti, the land minister, Senzeni Zokwana, the agriculture minister, and Thulas Nxesi, the public works minister (who is responsible for the Expropriation Bill).

According to the SACP, the NDR offers the shortest and “most direct” path to a socialist and then communist future for South Africa. It also makes it possible to achieve “elements of socialism” today, even while the country retains a mixed economy and a strong private sector.

The ANC has slowly but steadily been implementing the NDR ever since 1994. In recent years, it has stepped up the pace, as it believes the “balance of forces” now allows this. Key factors here include the ouster of Thabo Mbeki – who was reluctant to make “great leaps forward” – along with the success of the ANC’s “cadre deployment policy”. Overall, the ANC believes it now has enough control over the police, army, public service, judiciary, media, business, and other opinion formers (the universities and civil society) to be able to push ahead with radical “economic” transformation in this second phase of the NDR.

The most important goal of the NDR is to “eliminate apartheid property relations”: in other words, to put an end to private property rights, whether these are held by white or black South Africans. According to Cosatu, it is also vital to vest ownership of all land in the State in order to “break the power of white capital”. Take out the word “white” and the real meaning of this call becomes apparent.

Most NDR interventions, whether in the land reform sphere or more broadly, are being implemented in the supposed interests of “transformation” and “redress” for apartheid injustices. However, the real aim is rather to empower the State and a small elite within the SACP. In time, this small group will control the entire economy and society, in much the same way as did the Communist Party in the Soviet Union.

Once this system is in place, it will provide unparalleled power and wealth for the few at the very top. It will make the SACP the gatekeeper over all opportunities for advancement, which

will also offer various individuals significant opportunities for personal enrichment. In addition, pervasive state ownership and control will destroy not only the market economy but also the middle class, both black and white. The last objective is particularly important in a supposedly multiparty democracy, as the middle class could otherwise threaten the ANC's hold on power.

This is already evident from past election results, which show that most of the ANC's electoral support comes from the unskilled and jobless poor: from the people most dependent on social grants and the wider social wage. By contrast, the better educated, better off, and more independent middle class is more likely to support the Democratic Alliance and other opposition parties.

These voting patterns also help explain why the ANC has no interest in creating a class of black commercial farmers. On the contrary, the ruling party greatly fears the rise of black land owners because of the political and economic power they would wield. Against this background, the ANC's repeated claim that it wants to create new black farmers is the great fraud at the heart of all the Government's land reform efforts.

Overall, there is significant "method in the madness" of the policies now being directed at commercial agriculture (and other sectors of the economy). The Zimbabwe model is relevant too – not because South Africa is likely to implement land grabs in the same way – but rather because any major threat to property rights will curb investment, growth, and jobs, increase dependency on the State, undermine the market economy, and pave the way for the Government to take ownership or "custodianship" of ever more land and other assets. As the growth rate turns negative, the middle class will emigrate (if possible) or fall back among the poor (if not). The poor will be heavily dependent on the State for grants, transfers, and permits – and will become ever more fearful of voting against the ruling party. However, key individuals at the top of the ANC and the SACP will become super-rich and super-powerful, in much the same way as the top echelons of Zanu-PF have done.

What must farmers do?

The first thing to do is to understand what is going on and why. You need to know what laws are being passed and what powers they give the Government. You also need to understand the ideology which motivates the ANC and the SACP, for this explains why the Government will not in fact shrink from damaging the commercial farming sector – even though this is sure to reduce living standards, wreck the rural economy, and increase food prices.

Once you understand what is happening and why, the second thing is to organise against it. Join farming unions and civil society groups that have your interests at heart. Use your power as members to compel the leadership of those groups to act in your best interests. There is no need to try and forge a single representative group: on the contrary, several different groups working together will be more effective.

The third step is for these groups to identify core issues of principle that are essential to the future of commercial farming. Most important here are your property rights – these are non-negotiable. Thereafter, it is vital to shift the national debate away from its current focus on how best to redistribute land to how best to secure the future of commercial farming.

Farmers must play a much more decisive role in setting the terms of reference for the debate around land and agriculture. The emphasis in this debate must be on ensuring the survival and growth of the commercial farming sector. Do not fall into the trap of letting the Government set the terms of the debate. If you do, the Government will frame the debate in a way that puts you on the back foot and leaves you trying to explain why your core property rights should not be taken away. In a nutshell, by the time you find yourself talking about whether the Government should take 10%, 20%, or 50% of your farm, you have already lost. This failure to set the terms of the debate is the greatest failing of organised agriculture in South Africa.

Once you are clear about your non-negotiable principles – starting with the sanctity of your property rights – you can begin to exert pressure. Use your structures to target political parties, individual political leaders, and large agricultural businesses, along with your suppliers, the banks, and agricultural co-operatives. Challenge them publicly to lend their weight and influence to campaigns against policies that threaten the future of commercial farming. If they refuse to act in your interests, you may have to act against them. Boycotting a company's products will quickly send a strong message. You have economic and political power – so use it.

Lastly, you need a highly effective policy and communications strategy. Do not allow a single bad law or policy to be drawn up without challenging it publicly, building a lobby group of individuals and organisations to oppose it, and proposing a better alternative. Take the policy lead by strongly pushing for policies that will be effective in promoting investment, growth, and jobs. Engage constructively with the Government whenever it seems willing to listen to your ideas.

At the same time, do not allow a single misrepresented fact or piece of propaganda against commercial farmers to go unchallenged. Dominate the agricultural, business, and popular media with your ideas and arguments. Use every opportunity to state your case. Build strong relationships with international organisations, diplomats, journalists, and other policy and opinion formers. Farmers must turn popular opinion in their favour, for this will become the most powerful asset they have.

At present, the ANC and SACP are able to pursue the NDR without attracting almost any scrutiny or critical comment. South Africa is thus sleep-walking into a socialist and communist future. Yet if most South Africans knew what was at stake, they would thoroughly reject and oppose these outcomes.

Starting to resist in the way earlier outlined is a hardline strategy, and it carries risks. If farmers go this way then, in the short term, the accusations and the pressure against them will be ratcheted up. It is also late in the day, and the campaign against commercial farmers has already gone so far that there can be no guarantee of success. However, if you stay the course, you will increasingly win allies. If you can also change the terms of the policy debate so that it starts focusing on how best to secure the future of large scale commercial farming, you will be on to a winning formula.

On the other hand, what is certain is that further appeasement and a willingness to negotiate on core principles, such as the sanctity of property rights, is a losing strategy. It probably will not end up in the violent land invasions we saw in Zimbabwe. But it could well end up with the Government taking ownership, custodianship or control of ever more farming land – and ultimately making it impossible for commercial farmers to run profitable businesses.