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IMPACT OF ANC POLICY ON THE FARMING SECTOR, FOOD SECURITY, AND RELATED ISSUES

The importance of the agricultural sector

In 2012 the agricultural sector contributed 2.6% to South Africa's gross domestic product (GDP), well down on the 4% or so it contributed to GDP in 1994, the year in which the African National Congress (ANC) came to power. [*Fast Facts*, SAIRR, April 2013, p16; 1994/95 *Survey*, SAIRR, p98]

The sector's relatively small contribution to GDP is largely the result of modernisation and a shift in the economy from the primary sector to financial and other services. It also understates the importance of the agricultural sector, which is vital to South Africa's food security and has long been a key source of unskilled jobs.

At the same time, the sector is under pressure from a number of factors, including policy changes either already implemented or still in the pipeline. Partly as a result of these shifts, the number of commercial farms has dropped from 60 000 in the mid-1990s to some 35 000 now. In addition, the number of farm jobs has dropped by 30% in the same period, from around 1.09m in 1993 to 712 000 in 2012. [*Fast Facts*, August 2012]

Policy changes already introduced

The policy changes made by the ANC soon after it came to power are well known, but nevertheless merit brief recall so as to obtain an overall picture of the laws affecting the agricultural sector.

The 'property clause' (Section 25) in the 1996 Constitution allows expropriation of land (and other property) provided this is 'in the public interest' or 'for public purposes', and is accompanied by the payment of 'just and equitable' compensation, based on all relevant factors. Those expressly listed are market value, along with four other 'discount' factors: these being the current use of the property; the history of its acquisition and use; the extent of direct state subsidy in its acquisition or capital improvement; and the purpose of the expropriation. Relevant values for these discount factors are subtracted from market value to determine the compensation due. [Section 25 (1) to (3), 1996 Constitution]

The current property clause is not as strong as that in the interim 1993 Constitution, which allowed expropriation for 'public purposes only'. It also says that 'the public interest' includes 'the nation's commitment to land reform and to reforms to bring about equitable access to all South Africa's natural resources'. In addition, it entitles the State to 'take reasonable legislative and other measures...to enable citizens to gain access to land on an equitable basis'. [Sections 25 (4) and (5), 1996 Constitution]

Particularly important has been a policy decision, made soon after the political transition, to transfer 30% of farmland (equivalent to 25.8m hectares) to black people, whether by restitution or redistribution. The deadline for achieving this target, initially set at 1999, was later revised to 2014 and, according to the Government, is unlikely to be met by then (though some statistics suggest it has already been attained). [2012 *Survey*, pp598, 604]

The Restitution of Land Rights Act of 1994 (the Restitution Act) provides for the return of land rights to people deprived of these under apartheid laws dating back to 1913. Some 79 700 valid land claims have been lodged, of which some 76 200, according to the Land Claims Commission (the statutory body responsible for investigating and

adjudicating restitution claims) had been settled by March 2011. Though 96% of restitution claims have thus been resolved, some 3 450 claims then remained to be settled. [2012 *Survey*, p600]

The Provision of Land and Assistance Act of 1993 has been used to facilitate the redistribution of land. Under this statute, poor households with an income not exceeding R1 500 a month could initially obtain a grant of R16 000 (the Settlement/Land Acquisition Purchase Grant or SLAG) for the purchase of land. The amount and name of this subsidy have since been changed a number of times. Under the current Proactive Land Acquisition Strategy (PLAS), beneficiaries of land redistribution lease their land from the Government, rather than receiving individual title, as further outlined below.

Then there is the National Water Act of 1998, under which riparian rights to water were removed and the Government became the public trustee of the nation's water resources. This Act also gave the State the power to decide on 'the equitable allocation of water in the public interest' in order to redress past racial discrimination. New water authorities were empowered to grant new water use licences, which are very different from the riparian rights they replace as they last for a maximum of 40 years and are also subject to review at five-yearly intervals. The Department of Water Affairs and Forestry (since 2009 the Department of Environmental and Water Affairs), has drawn up a water allocation strategy under which it reportedly plans to allocate 70% of licensed water use to black people by 2024. In the interim, an initial target of 30% for black South Africans is supposedly to be met by 2014. [Anthea Jeffery, *Chasing the Rainbow: South Africa's Move from Mandela to Zuma*, SAIRR, Johannesburg, 2010, pp101-102]

Under the Land Reform (Labour Tenants) Act of 1996, a labour tenant may be evicted solely by an order of court, which may be granted only if this is just and equitable and if the labour tenant has failed to provide labour or otherwise materially breached his agreement with the farmer. The Act also gives labour tenants the right to buy the land they use for farming at a price that reflects 'the requirements of justice and equity'. Some 11 500 such claims have been lodged, of which about 40% have been settled via the transfer of some 135 000 hectares.

The Extension of Security of Tenure Act (Esta) of 1997 seeks to protect farm workers with residence rights from being evicted. Under the Act, farm workers lose their residence rights only if their employment is lawfully terminated under the Labour Relations Act of 1995. Thereafter, they still cannot be evicted except in terms of a court order, which may be granted only if the proposed eviction is 'just and equitable'. Eviction without a court order is punishable by fine, imprisonment for up to two years, or both.

Esta has been singularly successful in preventing the eviction of farm workers, for official figures show that only 826 evictions, affecting some 2 100 farm workers in total, took place between 1997 and 2009. [2009/10 *Survey*, p541] However, the Nkuzi Development Association, a non-profit organisation, has nevertheless repeatedly accused farmers of having illegally evicted more than a million farm workers since 1994 and this allegation has been widely spread. [*Business Day* 31 August, *Mail & Guardian* 2 September, *Financial Mail* 14 April 2006, *Farmer's Weekly* 16 March 2007]

Also relevant is the Marketing of Agricultural Produce Act of 1996 and related policy decisions, under which the former agricultural boards were replaced by a National Agricultural Marketing Council and agricultural subsidies were slashed to around 2.7% of output, making them among the lowest in the world. By contrast, farming subsidies remain substantial in many other countries: at around 22% in the United States of America (USA) and 45% in the European Union (EU). [*Business Report* 18 February 2009]

Also relevant are other policy changes with more general application but significant impact on agriculture, as briefly outlined below.

One of the most important is the Labour Relations Act of 1995, which protects and promotes legal strikes, while making it difficult to terminate employment whether by retrenchment or dismissal;

Then there is the Basic Conditions of Employment Act of 1997, under which the minister of labour may set minimum wages within specified sectors, including agriculture. Her most recent sectoral determination for agriculture, made early in 2013, raised minimum wages in this sector (by some 55%) to R105 a day, and could result in 100 000 job losses. [*Farmer's Weekly* 24 June 2013]

Also relevant is the Employment Equity Act of 1998, under which all designated employers (those with 50 or more employees or annual turnover above specified levels) must make their employees at all levels demographically representative of the economically active population (EAP). Since Africans make up 75% of the EAP, some 2.66m of South Africa's 3.55m top jobs must be filled by Africans, even though only 992 000 Africans (4.1% of those aged 20 or older) have completed post-school education. This leaves a shortfall of some 1.67m qualified Africans. [*Business Day* 9 September 2013]

The Act has been rapidly implemented in the public service, in particular. Here, demographic representivity has largely been attained – but at the cost of a major loss in skills, experience, and institutional memory. This, in turn, has undermined the efficiency of policing, along with border, disease, and fire controls. It has also contributed to electricity shortages and high costs, and to inadequate rail and port services.

Then there is the Broad-Based Black Economic Empowerment Act of 2003, which in turn has given rise to the AgriBEE Charter. This charter was gazetted in December 2012 as a sector code, making it binding on all enterprises in the agricultural sector with annual turnover exceeding R5m. Most farming enterprises fall within the category of 'qualifying small enterprises', as their annual turnover is between R5m and R35m. Such firms must comply with five out of the seven elements in the BEE scorecard (a departure from the usual BEE rule, which requires such enterprises to choose four out of seven elements with which to comply).

Depending on which five elements they choose, farmers may have to raise black equity ownership to 25% + 1, increase black representation at the 'owner/manager' level to 50.1%, increase black representation at supervisor level to 60%, spend 2% of payroll on skills development for black employees, contribute 3% of net after-tax profit to the development of black enterprises or the mentoring of land reform beneficiaries, and spend 1% of net after-tax profit on socio-economic development (mainly in the form of housing, schooling, electricity, or other services for farm workers). [AgriBEE Sector Code for Agriculture, Government Gazette, No 36035, *Government Gazette* 28 December 2012, pp53, 54-59]

Particularly important has been another policy decision (announced by the ANC in 2003) to phase out the 'commando' system under which some 82 000 experienced army reservists could be called out to patrol farms or track down alleged perpetrators of farm attacks. By 2005 all commando units had effectively been closed down, as their budgets had been frozen. Instead, responsibility for farm security was given to the already overburdened South African Police Service (SAPS). The SAPS has proved unable to end a high level of attacks on farmers. According to figures compiled by TAU-SA, there were some 2 800 attacks on farms between 1990 and 2012, in which some 1 560 people were killed. However, police figures between 2001 and 2007 (when the SAPS stopped reporting farm attacks as a separate category) show seven farm murders on average for every one reported by TAU. If the SAPS approach is used and extrapolated to cover years since 2007, this gives a murder rate among commercial farmers of some 68 per 100 000 people in 2011/12. This is more than double the national murder rate of 31 per 100 000 in that year. [2012 *Survey*, pp695-697, 679]

Policy changes now in the pipeline

Many of the policy changes now in the pipeline are ostensibly aimed at speeding up land reform, making it important to start by assessing what has happened in this sphere since the political transition.

The present year marks the 100th anniversary of the coming into operation of the Natives Land Act of 1913, which together with the Natives Land and Trust Act of 1936, prohibited Africans from acquiring land outside the rural 'reserves', most of which were later incorporated into the country's ten 'homelands'. Though the Land Acts also protected African land ownership by barring whites from buying up land in the reserves which made up 13% of the country's land, they notoriously prevented Africans from purchasing land in the remaining 87%.

As John Kane-Berman writes, the 1913 Act was introduced after an order of the Transvaal Supreme Court in 1905 had compelled the Registrar of Deeds to transfer title to one Mr Tsewu, an African who had purchased land. The judgment encouraged Africans to buy land collectively from whites ruined by the Boer War, and it was not long before some 1.2 million morgen had been acquired by Africans outside the homelands on a willing seller/willing buyer basis. A government commission found that farms and land owned by Africans were scattered across the country and that only 'wholesale removals' could change this. Those removals were later effected, hundreds of thousands of Africans being evicted from so-called 'black spots' some two decades after the National Party came to power in 1948. [*Business Day* 5 March 2012]

Even before these removals were effected, the 1913 Act (which entered into force in June that year) had caused great damage. It destroyed a class of African farmers who had previously competed effectively against their white counterparts, turning many of them into share croppers or labour tenants on white-owned farms. Others, no longer able to earn a living by supplying food to Johannesburg and other towns and cities, were forced to work on the mines as migrant labourers. [*Business Day* 21, 24 January, 25 March 2013]

At the same time, land in homeland areas was held mainly in communal ownership and administered by traditional chiefs, which prevented Africans in these areas from obtaining individual title there. In addition, the pass laws, coupled with other restrictions on black ownership and occupation of 'white' urban land, kept millions of Africans penned up in the homelands, which became increasingly overcrowded and impoverished. Things began to change in the mid-1980s, when influx control was abolished and Africans in urban areas were allowed freehold title. In June 1991 the National Party government followed up by repealing the Land Acts, making it possible for Africans to own rural land outside the homelands for the first time in close on 80 years. [1986 Part 1 *Survey*, p95; 1987/88 *Survey*, p504-505; 1988/89 *Survey*, p87; 1991/92 *Survey*, pp385-386]

These historical events have generated significant public support for the Government's three-pronged programme of land reform via restitution (the return of land lost through forced removals and the like), redistribution, and changes to tenure rules. However, nothing has thus far been achieved in addressing the tenure needs of the 20m or so people living on some 16m hectares of communally-owned land in the former homelands. In addition, the restitution and redistribution processes have been dogged by a host of problems, including the collapse of 90% of transferred farms and their failure to produce any marketable surplus. The main effect of land transfers to date has thus been to spend some R30bn (R23bn on restitution and R6.2bn on redistribution) on the purchase of about 6.7m hectares of formerly productive land, most of which has since fallen out of use and has brought little measurable benefit to the poor. In addition, large sums (R2.7bn in the 2013/14 budget, for example) are now having to be spent on recapitalising at least some of these failed farms. [2012 South Africa Survey, pp602, 604; *Farmer's Weekly* 14 June 2013]

In formulating its land reform policies, the Government has assumed a widespread hunger for farming land which subsequent events have now belied. In particular, 92% of successful restitution claimants have chosen to receive cash instead of land, underscoring the fact that few Africans want land to farm. The minister of rural development and land reform, Gugile Nkwinti, belatedly acknowledged this in April 2013 when he said: 'We thought everybody when they got a chance to get land, they would jump for it. Now only 5 856 [land claimants] have opted for land restoration.' People wanted money because of poverty and unemployment, but they had also become urbanised and 'de-culturised' in terms of tilling land. 'We no longer have a peasantry; we have wage earners now,' he said. [*Mail & Guardian* 5 April 2013] Two months later, the secretary general of the ANC, Gwede Mantashe, made much the same acknowledgement when he said: 'We think we can give people land while they have no relationship with it at all. Therefore, most of them prefer to sell their farms when their land claims are successful.' [*Farmer's Weekly* 4 June 2013]

The Government also assumes that its 30% (25.8m hectares) target is very far from being met and that 80% of South Africa's land remains in white hands, as President Jacob Zuma has often stressed. However, a recent land audit by

the Department of Rural Development and Land Reform (the land department) shows that Government does not know the racial ownership of the 79% of land it claims to be in private hands. The audit also seems flawed because it leaves out of account some 16m hectares in communal ownership in the former homeland areas, amounting to roughly 13% of South Africa's land. This, plus the 17m hectares (14%) the audit identifies as being owned by government departments and municipalities, must surely mean that 33m hectares (27%) is in state hands and is thus black-owned.

In addition, the audit found it impossible to determine the racial identity of private land owners. However, earlier research shows that a significant amount of privately owned land has been bought by black people on the open market since 1991, when the Land Acts were repealed. Though accurate data are hard to find, Professor Johann Kirsten of the University of Pretoria's Department of Agricultural Economics says that land in black ownership ranges from 15% to 28% of all privately-owned agricultural land in most municipalities – and that this proportion stands as high as 40% in some local authorities, especially in KwaZulu-Natal. [*Mail & Guardian* 8 February 2013]

Using the lowest (15%) proportion and assuming that 73% of South Africa's land is privately owned, this gives a figure of roughly 13.3m hectares of private land in black ownership. Add to this the total amount of land transferred since 1994 through both redistribution and restitution – some 6.9m hectares – and the grand total of privately owned land already in black hands is 20.2m hectares. This is close to the 25.8m hectares (30%) the State seeks to transfer to black South Africans. Add in the 33m hectares in state and communal ownership, and the 30% target has already been exceeded. [2012 *South Africa Survey*, p604]

In these circumstances, the Government's determination to pursue land reform is clearly based more on an ideological commitment to change the property regime within the country than on any real demand for more farming land from the African majority. The policy changes the ANC now plans also form part of the 'second phase' of its national democratic revolution, which (as the ruling party says) is to be 'characterised by more radical policies and decisive action'.

Three 'land reform' bills in 2013

Three bills released in 2013 are ostensibly aimed at speeding up land reform and will doubtless have particular impact on the commercial farming sector. However, these bills will also apply far more widely to land and property of virtually every kind. Their combined effect will be to make expropriation both quicker and cheaper for the State, thus putting the property rights of all South Africans at risk.

Since land targeted for restitution will be particularly vulnerable to expropriation, analysis of the three bills may profitably start with the ***Restitution of Land Rights Amendment Bill of 2013 (the Restitution Bill)***.

Restitution involves the return of land to black people who were dispossessed of it after 1913 under the Land Acts, the Group Areas Acts, and other racial laws. Though this leg of land reform has been widely endorsed as a necessary redress for past wrongs, problems in the restitution process have been legion.

Some of the claims submitted have been false, while many have been duplicated. State officials have sometimes inflated claims (from six to over 600 in one notorious instance), while the processing of claims has often been dogged by gross administrative inefficiency. In addition, almost all the farms restored to claimants have since fallen out of production.

The Restitution Bill nevertheless seeks to re-open the current land claims process by changing the cut-off date for the lodging of claims from December 1998 to December 2018. If enacted this year, it will give black South Africans another five years in which to submit a host of new land claims. As Ruth Hall of the Institute for Poverty, Land and Agrarian Studies (Plaas) at the University of the Western Cape comments: 'The restitution process could double in size and could well take another 30 years to complete.' [Plaas, *Another countryside*, 20 June 2013]

Some of these new claims will, of course, be lodged against commercial farms. A number of them are again likely to be false or inflated, especially now that verification of land claims has largely been abandoned. The re-opening

of the restitution process could also stir up a hornet's nest, as existing restitution beneficiaries find the land restored to them under fresh claim from newcomers. It will also greatly increase the administrative burden on an already inefficient State, as well as the financial burden on the fiscus.

However, another bill in the policy pipeline will help reduce the costs of restitution by giving the task of deciding the compensation payable to a state official.

Under the ***Property Valuation Bill of 2013 (the Valuation Bill)***, the value of land identified for restitution will be determined by a new 'valuer general'. According to this Bill, the office of the valuer general will be an 'autonomous' juristic person, which 'must be impartial' and 'exercise its powers without fear, favour, or prejudice'. However, it will also be 'accountable to the minister', while the valuer-general 'must be appointed by the minister'.

In deciding the value of property identified for land reform, the valuer general must take account of its market value, less the four 'discount' factors listed in the Constitution. However, the valuer general will be able to develop further 'criteria' and 'policies' to be applied in deciding on valuations, while Mr Nkwinti will further be empowered to make regulations laying down additional 'criteria for the determination of the value of property'. What these criteria might be remains unknown.

An owner may 'dispute the valuation' decided by the valuer general, but 'that dispute may not be used to delay, postpone or in any other way frustrate' the expropriation of his property. The Valuation Bill thus empowers the Government to proceed with an expropriation irrespective of any dispute over the compensation due.

An owner dissatisfied with a particular valuation cannot immediately seek court review but must begin by lodging an objection with the office of the valuer general, which may adjust the valuation if it thinks this necessary. An objector who remains dissatisfied still cannot approach the courts but must instead apply for a review of this decision to a 'valuation review committee' appointed by the minister on conditions decided by him. This review committee will be able to 'determine its internal procedures' in disposing of reviews. It will be able to decide them behind closed doors and without providing written reasons.

According to the Valuation Bill, 'a decision of the review committee is final and binding on the parties and subject only to review by a court of law'. This proviso has presumably been included to prevent the measure from being struck down as unconstitutional for seeking to oust the jurisdiction of the courts. In practice, however, the right to apply to court is likely to benefit only those with deep pockets – the few who can afford litigation to contest a valuation following a prolonged review procedure and after they have already have lost both ownership and possession of their property to the State.

The Valuation Bill also gives the valuer general the sole power to determine the value of property which has been targeted for expropriation. Where expropriation is in issue, the many of the relevant provisions are now to be found in the ***Expropriation Bill of 2013 (the Expropriation Bill)***.

The current Expropriation Bill is better than its 2008 predecessor in one key way, for it allows the courts, rather than the State, to decide the 'just and equitable' compensation payable on expropriation. However, while the Bill appears to be making a vital concession with one hand, in practice most of the benefit of this is removed with the other.

Among other things, the Bill still:

- allows an 'expropriating authority' to take ownership and possession of property by notice to the owner;
- allows such an authority to set a date for the payment of compensation which is later than the dates on which ownership and possession pass to the State; and
- states that compensation 'becomes payable' only when its amount has either been agreed with the State or decided by the courts.

These provisions will put great pressure on expropriated owners to agree to the amount of compensation offered by the State, rather than remain without the benefit of either the property or its value in money. The option of applying to court to decide a different measure of compensation is thus (again) likely to benefit only the few who can afford to embark on costly litigation despite the prior loss of their property to the State.

By contrast, the current Expropriation Act of 1975 states that 'not less than 80%' of the compensation due must be paid to the expropriated owner when the State takes possession of the property, with interest due on the outstanding balance. The present Act also requires compensation to include full market value, along with damages for loss suffered (such as the loss of future income) and a further small percentage as a *solatium* (solace). These safeguards against abuse of the power to expropriate are now being removed.

According to the Government, the Expropriation and Valuation Bills are needed to speed up land reform, which has been delayed by inflated farm prices under the 'willing seller/willing buyer' principle. But this claim is false, says Agri SA, for the State commonly offers farmers around 60% of market value and then 'bullies' them into accepting this.

The Green Paper on Land Reform

The three bills will also give impetus to the *Green Paper on Land Reform* published by Mr Nkwinti in September 2011. The Valuation Bill is fully in line with the Green Paper, which recommends the appointment of a 'valuer general' to be made responsible for 'determining financial compensation in cases of land expropriation under the Expropriation Act or any other legislation'.

The Green Paper also proposes the establishment of a 'land management commission' comprising 'all stakeholders in land' along with other people to be appointed by the minister for 'their special attributes'. The commission will be 'autonomous but not independent of the ministry and the department' (sic).

According to the Green Paper, the commission will have the power to 'validate/invalidate individual or corporate title deeds'. It will also be able to 'seize or confiscate land gotten through fraudulent or corrupt means'. This last criterion is not explained, but the Green Paper seems to hint at its meaning when it talks of land acquired 'in the colonial and apartheid era' of having been lost to black people 'through force or deceit'.

A bill establishing a land management commission is reportedly in the pipeline. If this new body is given the power to invalidate title deeds or confiscate land, this will drive a coach and horses through the property rights guaranteed by the Constitution.

(According to recent press reports, this commission will help recover 'all land stolen from black people during apartheid'. [*The New Age* 7 June 2013] It will also have the power to subpoena all South Africans to provide information on their land holdings. This will help establish the racial identity of land owners, while the deeds office will also reintroduce the racial classification of land ownership, which was discontinued in 1994.) [*The Star* 20 August 2013]

The Green Paper seeks to confine land tenure to four options:

- leasehold rights on state land;
- freehold rights 'with limited extent';
- communal ownership with 'institutionalised use rights'; and
- 'precarious' freehold tenure for foreigners.

Leasehold on state land

Under the Green Paper, land belonging to the State will no longer be available for sale to private owners. In addition, the beneficiaries of land restitution or redistribution will no longer be able to obtain freehold title but will instead be confined to leasehold tenure.

This proposal entrenches the approach already evident in the Proactive Land Acquisition Strategy (PLAS). Under PLAS, the Government buys farms and leases them to emerging farmers on terms allowing it to terminate

agreements if farms are 'under-utilised'. This is supposed to ensure the productive use of land but has probably promoted failure among new farmers by making it difficult for them to obtain credit – and leaving them dependent for financial support on an overburdened and often ineffective bureaucracy. It also leaves them vulnerable to arbitrary eviction, as illustrated by the case of Veronica Moos, who was evicted from her leasehold farm in 2009, allegedly for failing to farm well enough – but more probably because the then minister wanted to allocate her farm to a friend.

Not surprisingly, new farmers want full ownership not mere leasehold title. Several hundred of them made this point strongly to the land department in December 2010, but the deputy minister, Joe Phaahla, was unpersuaded. PLAS leases had already been changed to exclude any option to buy and the Government was 'not looking at selling land to black farmers', he said.

An important shift in land reform has thus already taken place and will be further consolidated if the ideas in the Green Paper are translated into law. Instead of generating increasing numbers of self-reliant black producers working their own farms, the State is setting itself up to own more and more of the country's land. This is an indirect route to land nationalisation.

Freehold land 'with limited extent'

Under the Green Paper, farmers who already own land will retain freehold title but will be subject to new ceilings on the size of their farms. Determining these ceilings will itself be a huge administrative task. Says Professor Nick Vink of the University of Stellenbosch: 'You can't impose the same land ceiling on a sheep farm on the Karoo as you could on one in Mpumalanga. And what if a sheep farmer decides to switch over to cattle? Keeping tabs on such questions will require an annual audit.'

Officials are also intrinsically ill-equipped to decide the optimum size of farms as most lack experience of farming. In addition, the Government's ideological preference is likely to be for relatively small commercial farms, so that 'surplus' land can be distributed to millions of small farmers regarded by land activists as the 'missing middle' between household food gardens and big commercial farms.

The Green Paper overlooks the likely economic consequences of the land ceilings it seeks. Once these take effect, thousands of farmers with 'excess' land may have to dispose of the surplus at much the same time. This will flood the market and drive prices down. Since the only buyer to whom the ceilings will not apply will be the Government, the State will be able to buy up – or expropriate – large tracts of land at artificially low prices. This will bring more and more land into state ownership, providing a further indirect route to land nationalisation.

Communal tenure 'with institutionalised use rights'

Some 20m people living on roughly 16m hectares of land in mainly homeland areas remain subject to a communal system of land tenure the Government has long been promising to reform. The Communal Land Rights Act (Clara), adopted in 2004, would have made it possible for people in these areas to obtain a restricted form of individual tenure – but Clara was never brought into operation, while in 2010 it was struck down by the Constitutional Court on the technical ground that Parliament had used the wrong procedure in adopting it.

The upshot is that some 20m South Africans – often the poorest and most marginalised – remain excluded from freehold title. The negative consequences are illustrated by the situation in the former Transkei homeland, where land is fertile but production often low. Writes Professor R W Johnson:

Since land rights [in the region] are communal, no farmer...puts up a fence to prevent his animals straying on to the road... Since no one can claim to own any particular piece of land, no one feels responsible for soil erosion and no one does anything about it. And since land is communal, anyone who tries to farm is subject to the constant theft of the crops he grows or the livestock he grazes... Yet the district has good soil...and is green and well-watered....It could on its own easily feed [much of] South Africa... But all one sees [there] are dongas, the most awful soil erosion, a few scattered crops and a few scraggy animals. The region can't even feed itself.

The Green Paper signals that no further attempt at reforming communal land tenure is now envisaged. Instead, some 20m people are to be left without the prospect of individual title and with nothing more than 'institutionalised use rights' unlikely to cure the adverse consequences of communal ownership.

A strategy document unveiled in June 2013 by Mduduzi Shabane, director general of rural development and land reform, now provides more insight into what the Government envisages. According to the document, there will 'single-title' land ownership in traditional areas. The single title will vest in the traditional council for the area, which will be responsible for allocating parcels of land to households (not individuals) and for 'adjudicating disputes on land allocation and use'.

According to the ANC-aligned Congress of Traditional Leaders of South Africa (Contralesa), the idea of individuals owning such land is a colonial perversion, which cannot be accepted. Moreover, if the Traditional Courts Bill of 2011 is enacted into law, traditional leaders will be given a number of new powers, including the power to 'define' (and thus revise) customary law. The Bill will also give traditional courts the power to impose levies, require unpaid labour, and strip people of customary law benefits, such as the use of land. Widows could find themselves more vulnerable to eviction, as could those who anger their traditional leaders. The Democratic Alliance has criticised this Bill as an attempt by the ANC 'to buy political patronage'. Agang SA leader Dr Mamphela Ramphele sees a similar motive behind it, saying: "Traditional leaders will say: "You are my people and this is how you will vote.""

'Freehold but precarious' tenure for foreigners

Though foreign ownership of South African land is minuscule, the Green Paper reflects a fear that foreigners might 'take our land', leaving too little for South Africans. The document thus seeks to curb foreign ownership by imposing conditions which foreigners must fulfil to keep their land investments. This is likely to send out a message that foreign investment in land is unwelcome, which could further damage the country's capacity to attract direct investment from abroad. In August 2013 Mr Nkwinti said that 'legislation to ring-fence South Africa's productive land against an onslaught of aggressive buying by foreigners' would soon be put before Parliament. [*The Star* 13 August 2013]

The Expropriation and other Bills, along with the Green Paper, must also be read in the context of the draft Land Tenure Security Bill of 2010 (the Tenure Bill), which was unveiled in 2010 and is reportedly to be put before Parliament for adoption this year. [Ruth Hall, 'What the one hand giveth', *Plaas*, 21 June 2013]

Land Tenure Security Bill of 2010

Under the Tenure Bill, farm residents are to be given a host of wide-ranging rights, including the right to 'do commercial farming'. They will also have a right of 'access to development' at the farmer's expense. These extensive rights are likely to encourage farm invasions, especially as anyone who has openly resided on a farmer's land for six months will be deemed to have his consent to do so. [South African Institute of Race Relations, *Submission to the Department of Rural Development and Land Reform regarding The Draft Land Tenure Security Bill of 2010*, Johannesburg, 22nd February 2011]

According to the Tenure Bill, any failure by a farmer to give effect to these wide-ranging rights could be construed as a constructive eviction. For this offence, the stipulated penalty is to be five years' imprisonment without the option of a fine. In addition, physical evictions of farm residents will become more difficult to carry out, requiring not only an initial court order but also further administrative approval. These provisions of the Bill are likely to give farmers yet more reason to shed as much labour as possible. They could also encourage them to leave the country to farm elsewhere in Africa (as many are reportedly already doing). This will cost farm jobs and add to rural destitution, rather than aiding rural development. [SAIRR, submission]

The Tenure Bill also calls for the establishment of agri-villages, which Mr Nkwinti says will provide new opportunities for 'tenure security, sustainable human settlement, and food production' for South Africa's 2.8m farm residents. In fact, however, those resettled in agri-villages will have no tenure security at all as they will merely be given 'temporary permits' to occupy land and farm. Some may in time be given freehold title, provided they have made 'better use' of the land allocated to them than their neighbours. Others, however, are likely to lose their residence

permits if they do not farm 'well enough' to satisfy the interpretation placed by officials on this inherently vague test. [DRDLR, Strategic Plan, 2010-2013, pp6-7]

Residents of agri-villages will thus have less protection against eviction than farm residents currently enjoy. [SAIRR, submission] They will also come under great pressure to succeed at small-scale farming, even though this is seldom profitable and requires a high level of entrepreneurial drive, a complex range of skills, and enough working capital to cover start-up costs, at minimum. Attempts at small-scale farming without the necessary resources are likely to result in over-grazing, soil erosion, and the trespassing of livestock on to adjacent farms. Moreover, the more farming fails, the more agri-villages are likely to turn into little more than over-crowded shack settlements [SAIRR, submission]

Other Changes in the Policy Pipeline

The ANC has also mooted a number of further policy changes relevant to the agricultural sector. These include:

- changing the Constitution to allow restitution claims earlier than the current cut-off date of 19 June 1913 so as to accommodate claims by Khoi-San communities to land in the Western and Northern Cape; [*City Press* 2 June 2013]
- making other amendments to the property clause in the Constitution, as some trade union activists have urged, so as to prevent it being used to slow down land reform in the future; [*The New Age* 14 June 2013]
- amending the Marketing of Agricultural Products Act of 1996 so to make the Government 'the public trustee of the nation's agricultural and all other food markets'. The amendment bill of 2013, recently tabled for public comment, will also give the director general of agriculture, forestry and fisheries the power to 'allow the importation into or exportation from South Africa of agricultural, forestry and fisheries products under the authority of a permit issued by him and on such conditions as he may determine' [Section 14, Marketing of Agricultural Products Amendment Bill of 2013; Section 16, amended Act; *Business Day* 12 August 2013]
- introducing new equity-sharing rules, under which the land department will reportedly require commercial farmers to provide 'disciplined' farm workers who have worked in the fields for ten years with 'a 10 percent share-equity in the land, based on its market value'. A draft policy paper also proposes that, after '25 years of disciplined service', the farm worker or dweller 'shall be entitled to 25 percent share equity of ownership of the land'. [*The Sunday Independent* 8 September 2013] On this basis, a farmer with ten farm workers, each with ten years' service, would lose ownership of his land after a decade;
- depriving farmers of unused water under a 'use it or lose it' principle, under a new 'water policy review'. The ANC's Mangaung conference committed the party not only to speeding up land reform but also to establishing a more equitable system of water allocation. Under the new policy document recently released by the minister of environmental and water affairs, Edna Molewa, all South African water will be placed in a public trust managed by the minister, who will be responsible for re-allocating it. She describes her proposals as a 'game-changer', which will 'free up' water so that it can be used to boost economic development. She will thus re-examine the present allocation of 62% of South Africa's surface water to agriculture, which is 'constraining the growth of mining and industry', she says. Steps are also in the pipeline to stop the trading of excess water by existing water rights holders, such as farmers. [*The Sunday Independent* 8 September 2013]

However, the National Water Act of 1998 already empowers the State to reallocate water more equitably. The main problem, it seems, is that the State has battled to implement the new regime set out in the Act, partly because of its complexity but also because it requires the Government to consider 'social and economic implications' in reallocating the water. This has led to a number of court challenges, which the State has lost. The policy review thus seeks to eliminate what Government sees as obstacles to its transformation agenda. [*Financial Mail* 13 September 2013]

Implications of ANC Policy

According to the Economist Intelligence Unit and its annual food security index, food security depends on the availability of food, as well as its affordability, quality, and safety. In 2012, the unit ranked South Africa in 40th place out of 105 countries surveyed. [*Business Day* 13 July 2012] In 2013 it put South Africa 39th out of the 107 countries surveyed, with an overall score of 61%. The United States, with a score of 86.8%, was the most food-secure country, while the Democratic Republic of the Congo was the least food-secure, scoring just 21%. [*Business Day* 3 July 2013]

South Africa is one of the 15 most arid countries in Africa, as well as one of the smallest, but it nevertheless produces one third of the continent's total agricultural output. [*The Herald* 7 September 2012] The African continent has the highest agricultural potential of any continent on earth, but no country on it other than South African can claim to be food sufficient. The reason lies in the system of traditional communal ownership that is common throughout the continent.

This system worked well when populations were small and land was plentiful, because communities could simply move away when land become depleted and come back only when the area had recovered. It was a system that suited nomadic pastoralism but cannot begin to cope with the needs of urbanisation. [*The Herald* 7 September 2012]

Urban people cannot grow sufficient food to meet their own needs and are totally reliant on the country's agricultural sector to do this for them. In South Africa today, 60% of the population is urbanised and this figure is expected to rise to 70% in the next decade. In this time, the demand for food is likely to rise exponentially as the population expands and increased prosperity fuels a demand for meat and other 'luxury' foods beyond mere staples. [*The Herald* 7 September 2012]

However, of South Africa's 122m hectares of land, only some 102m hectares are used for farming. Of this, about 84m are used for grazing, while 17m hectares serve as arable land and 1.2m hectares are under irrigation. [*The Star* 13 August 2013] This means that the country has relatively little high- and medium-value agricultural land. In addition, some of this limited land has recently been lost to mining and urban development. According to the deputy minister of agriculture, forestry and fisheries, Pieter Mulder, an analysis by his department in 2011 found that 2m hectares of land suitable for crop production had 'irrevocably been converted to non-agricultural uses'. This area is roughly the size of the Kruger National Park. Dr Mulder said the quantity of available high-value arable land in South Africa had declined steadily from 0.38ha per person in 1996 to 0.31ha per person in 2005 and thereafter to 0.25ha per person at present. 'This is well below the international norm of 0.7ha per person,' he said. [*Business Day* 19 August 2013]

In addition, half of South Africa's arable land falls within former black homelands and is generally farmed in accordance with traditional methods, which means it cannot produce enough food to meet even its own requirements. The remaining arable area is farmed commercially and produced a surplus for the market. Hence, about 8% of South Africa's land area produces roughly 70% of the country's food supply, says Agri SA. This small area is critical to South Africa's food security and logically should be carefully retained within the commercial farming sector, which alone has the expertise and capital to ensure that this output is maintained. Yet, instead of helping these key producers, many of the Government's policy interventions have increased the difficulties of successful farming. [*The Herald* 7 September 2012]

At the same time, South Africa has never lost its status as a net food exporter in at least 35 years (which is as far back as the data goes). Between 1975 and 2010, South Africa's agricultural export-minus-import trade balance remained positive throughout. During that time, agricultural imports grew from R300m to R34.6bn (by 11 440%), while agricultural exports grew from R1.2bn to R46bn (by 3 742%). However, the faster growth in imports suggests that South Africans are increasingly relying on foreigners to supplement their food production capacity. In 1975 the value of exports was 400% that of imports – but by 2010 exports were reduced to 133% of the value of imports. [*Fast Facts*, SAIRR, August 2012, p3]

In addition, though the country as a whole is food secure, in 2011 roughly 3.37m South Africans (6.5%) had 'severely inadequate' access to food, according to Statistics South Africa, while another 7.56m people (14.6%) had inadequate access to food. [2012 *South Africa Survey*, p562] Food inflation is rising, for it stood at 6.8% in July 2013 as opposed to 4.9% in July 2012. If food inflation continues to rise – which could easily happen if the rand weakens further and if increased food imports are needed – still more South Africans are likely to go hungry. The Government could find itself caught in a cleft stick: needing to increase social grants to help make food affordable for the poor but lacking the money to do so without borrowing more and thereby increasing the budget deficit to an unsustainable level. Yet, if it fails to increase grants to help the poor, it will also face more protests and demonstrations, along with a further decline in the ANC's legitimacy.

Since 1994 the need for commercial farmers to boost their productivity has pushed many smaller producers out, resulting in bigger farms and more mechanisation. Helped by food imports, food security has thus been maintained, despite a rapid increase in the country's population. However, Government policy has hindered, rather than helped, the key commercial farming sector. Policies now in the pipeline – including the Green Paper, along with the Restitution, Valuation, Expropriation, and Tenure Bills – now threaten the sector yet further.

The Government claims to be acting in the interests of the rural poor and in order to redress a great historical wrong, but land reform of the kind that it proposes is essentially a charade. Far from extending land ownership to many more black South Africans, the green paper and these various other bills will work together to bring about incremental land nationalisation. There will be no 'big-bang' approach, but the Government will gradually assume ownership of ever more land while more and more South Africans will find themselves without individual title and dependent on the State's permission for their occupation of the land on which they live or work. Instead of helping black South Africans experience the security of land ownership, the ANC's proposed new policies, if carried into law, is likely to prevent them from acquiring this important foundation for economic and political independence.

The ANC's real motivations have little to do with historical redress. They are better summed up by the Congress of South African Trade Unions (Cosatu), which recently urged the Government to bring about 'state ownership of all land in the country' as this would 'break the power of white capital'. Take out the word 'white' – which is essentially a red herring – and the objectives of the ANC and its allies become clearer.

The ANC and its partners in the tripartite alliance are committed to a national democratic revolution, aimed at giving the ANC, among other things, hegemonic control over all the levers of state power in the country. Land is one such lever, as experience in Zimbabwe has illustrated. Land reform there – which Mr Nkwinti recently took pains to praise – has left virtually all land in the hands of the Government, which leases it to people on a 'use it or lose it' basis. This has given the Mugabe administration a powerful instrument of political control. South Africa's ruling party may also want the same for itself as its already declining electoral support withers further in the future.