

Müller, Melanie; Kotzur, Laura

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Sense of Frustration

The Debate on Land Reform in South Africa

Melanie Müller and Laura Kotzur

In December 2018, the ruling African National Congress (ANC) and the opposition party, Economic Freedom Fighters (EFF), agreed to draft an amendment to the constitution in the South African Parliament. Its intention is to give concrete form to existing options to expropriate land without compensation. The narrative of land reform discussions in South Africa often creates the impression that the expropriation of land owned by white farmers without compensation could solve the country's problem of unequal income distribution. It would, however, take a whole set of political reforms to create more social justice. Visible successes might help appease those groups that are disappointed with South African democracy 25 years after the end of apartheid, but if the reforms fail then this will likely exacerbate the already palpable sense of frustration felt by ordinary South Africans.

The equitable distribution of land is a topic that has dominated political debate in South Africa, particularly in the run-up to the 2019 elections to be held in May. Towards the end of apartheid, Whites owned more than 87 percent of the land, but they only made up 11 percent of the population. Since forming a government in 1994, the ANC has ruled out broad-based land reform, but has announced that, within five years, 30 percent of the country will be redistributed according to the principle of 'Willing Buyer, Willing Seller' – the government will buy land from white farmers if they consent to sell. Black South Africans can then buy the land, partly funded through subsidy programmes. However, 25 years after the first democratic elections, the results are not looking good. By 2018, only

9.7 percent of land was redistributed, far short of the promised 30 percent. The South African government had repeatedly postponed its own deadline for achieving this goal until, eventually, it had to give it up.

In the past year, land distribution, which is seen as unjust by large parts of the population, has become a key issue in the political debate on social justice in South Africa. During the election campaign, land reform has been top of the political agendas of the three most important parties – the ANC, the EFF and the Democratic Alliance (DA). The DA offers more market-based problem-solving tools, the EFF has focussed on bringing land under state ownership and the ANC's approach contains elements of both approaches.



There is a lot at stake for the governing ANC. After the end of apartheid, it came to power on the promise of overcoming the social inequality between Blacks and Whites. Yet despite some progress, such as an improved energy supply, South Africa now has some of the highest levels of social inequality in the world. According to Statistics South Africa (Stats SA), 55 percent of 58 million South Africans currently live in poverty. According to official figures, the unemployment rate is around 27 percent. Poverty continues to affect first and foremost those identified under apartheid as Blacks or Coloureds. In the meantime, a small black middle class has emerged.

For a long time, the ANC, formerly a liberation movement, was practically the only political alternative for the non-white electorate because the party wanted to combat the unequal distribution of income between Blacks and Whites resulting from apartheid. Although the DA has now established itself as the second strongest power, it is only gradually gaining popularity among the black population; to date, its votes have come primarily from Whites and Coloureds.

In the 2014 parliamentary elections, the ANC lost its two-thirds majority which fell to 62 percent. The EFF has entered parliament for the first time, gaining six percent of the vote. Its manifesto was targeted at those sections of the population that were economically excluded and had lost confidence in the ANC. The EFF's key election promise was and is to nationalise the mining industry and land. This policy piled considerable parliamentary pressure on the ANC during the last legislative period. MPs in the EFF party have tabled several motions to investigate the possibility of expropriations without compensation. But the ANC has repeatedly refused to deal with the issue. However, in early 2018, ANC MPs voted in favour of a new EFF resolution to consider amending the South African constitution to allow the options to be examined.

The Various Aspects of Land Reform

The ANC has since managed to seize the initiative on the issue of land reform. Since February 2018 when Cyril Ramaphosa took over from ex-President Jacob Zuma, who was suspected of corruption, the party has struggled to regain lost confidence. Zuma is accused of 'state capture': appointing political allies to government posts for his own financial gain. A commission is currently investigating the allegations. Many South Africans now believe that the former liberation movement has betrayed its ideals and now prioritises enriching itself economically.

Their frustration is reflected in the increasing numbers of those not voting. Voter turnout has been steadily declining since 1994. In 2014, 43 percent of voters either did not register at all or were registered but did not vote. As a result, the ANC gained only 35 percent of all eligible votes in South Africa, down from 54 percent in 1994.

The programme of land reform was greeted by concerns both at home and abroad that it might be accompanied by violent expropriations. However, to date, steps taken by Pretoria indicate a democratic and orderly process. In December 2018, a committee presented the results of a ten-month consultation process that asked groups across the country for their opinions on land reform. That same month, the South African Parliament confirmed it would implement the committee's key recommendations.

These recommendations include an amendment to paragraph 25 of the South African Constitution which explicitly defines under what conditions land can be expropriated without compensation. In fact, this possibility is already provided for in the South African constitution — as it is in many other constitutions. It has, however, hardly been used at all in practice. Concerns that concretising paragraph 25 could lead to large-scale expropriations without compensation appear to be un-

founded. According to political scientist Ruth Hall, one of ten experts on Cyril Ramaphosa's advisory panel on land reform, paragraph 36 of the constitution would also have to be amended for this to happen. While it does allow rights restrictions under certain conditions — such as the right to own property — it requires that such restrictions are “reasonable and justifiable”. Amending paragraph 36 would require a 75 percent majority in Parliament — which is unlikely even after the 2019 general election.

In December 2018, Parliament decided to set up an ad hoc working group comprised of representatives of the various parties and additional persons. It is expected to report back to Parliament with a draft proposal to supplement paragraph 25. The supplement is to contain an explicit formulation for cases where expropriation is possible, thus legitimising it. Experts expect it to specify the criteria under which compensation can be paid out. In their opinion, expropriations without compensation will only occur in very few cases, for example if land is used as a speculative commodity. However, they complain that the problems of high-grade social inequality cannot be solved by merely redistributing land.

Ultimately, it is not simply a question of making land available but also about its use — South Africa needs to find solutions to a complex problem which extends beyond the issue of expropriation without compensation. Currently, at least three aspects of the problem form the core of the political debate. Firstly, what mix of policy instruments is needed to achieve a fairer distribution of land and resources without harming agriculture? Secondly, it is a matter of ensuring legal security for the people who live on communal land — land that is administered by traditional elites and located predominantly in rural provinces. And thirdly, the more equitable distribution of housing in cities plays an important role.

Historical Inequality and Land Ownership

The unequal distribution of land in South Africa was cemented by a series of policies and laws enacted before and during apartheid. The Natives Land Act of 1913, which provided for a redistribution of ownership in South Africa, designated areas exclusively for Whites. As a result, Blacks were expelled from their land. This structural inequality was promoted under apartheid from 1948. The apartheid regime not only divided the population into different racial groups, it also physically separated these groups.

Between 1960 and 1980, around 3.5 million black people were forcibly (and often violently) resettled in the ‘homelands’. These rural areas were under the administration of the traditional elites, that is, representatives of tribal ruling structures and dynasties, such as chiefs, who had in place the administrative structures of traditional authorities. Under apartheid, members of those traditional authorities enjoyed a special status due to their administrative powers and were thus able to distinguish themselves from the rest of the black population.

Other black South Africans, officially known as ‘Africans’, were prohibited from engaging in their own economic activities and from acquiring land. As part of the Bantu Education system, black people were educated to carry out orders; they were not trained to learn how to become self-employed. Members of the black population were mostly employed in agriculture and mining as workers for white owners or as domestic staff in white households.

The regime continued to pursue its policy of segregation in the cities. The Group Areas Act came into force in 1950 and provided for cities to be subdivided according to racist criteria. Large parts of the urban population were forcibly and violently moved to urban areas designated for their use only. The different city districts were allocated resources, such as road construction or access to electricity or water, based on a racist hierarchy. Areas

where Whites lived were afforded special privileges, while Blacks were forced to live in miserable conditions. There were also gradations between Indians, Coloureds and Africans; these groups were also physically separated from each other.

The uneven distribution of infrastructural resources is still visible today; one consequence of segregation is the dysfunctionality of some areas.

It is precisely these structural differences for Blacks and Whites promoted by the apartheid regime that the ANC promised to overcome after the end of apartheid. After the first democratic elections in 1994, it began implementing land redistribution programmes. However, the ANC eventually decided to forego a comprehensive and profound programme of land reform and the resulting expropriation of land owned by Whites.

The ANC has three programmes aimed at improving the situation for black South Africans:

- The purpose of the redistribution programme was to redistribute land formerly owned by Whites in order to eliminate the country's structural inequality. The programme is based on the principle of 'Willing Buyer, Willing Seller', as described above.
- The restitution programme provided either for the restitution of land or financial compensation for those who were forcibly expelled from their land as a result of racist legislation. Beneficiaries are not necessarily entitled to the territory they lost, but to substitute areas or alternatively to financial compensation. This should ensure that productive farms and other businesses are not affected by the land being returned to its rightful owners.
- The tenure programme aims to provide legal certainty for those who continue to live or work on communal land (in the former homelands) or as tenants on land (usually) owned by Whites. Various laws should ensure that these individuals cannot simply be evicted from land, even if they were not its legitimate owners.

Given the ANC governments' poor record on redistribution, the effectiveness of these programmes is now being called into question. By calling for blanket expropriations without compensation, the EFF have made it clear that, in their opinion, land redistribution can only be achieved through expropriation. However, an evaluation of South African land policy since the end of apartheid indicates that it is not absolutely necessary. The report argued for greater use of this option if, for example, the land is not being used productively.

This was the result of a commission set up by parliament in 2016 and led by former President Kgalema Motlanthe. By October 2017, it had dealt comprehensively with issues of distributive justice in South Africa. According to the commission, the reasons for the sluggish redistribution of land are not necessarily down to flaws in the way existing programmes have been set up, but instead due to their poor implementation. In particular, the government is taking far too long to process redistribution applications. One key challenge is the rampant corruption and the resulting inefficiency of government agencies in South Africa. This appears to be the source of delays to processing applications.

It also undermines the legal security of black South Africans living in the former homelands and in the province of KwaZulu-Natal. This is compounded by clientelist legislation and illegal practices by the traditional authorities which still hold sway in some regions.

If greater equity is to be achieved in the distribution of land, there is a need for a change of direction in various areas. In September 2018, Cyril Ramaphosa appointed ten experienced experts to the aforementioned panel (see p.3) to advise him on further steps. However, the South African government is primarily confronted with the political question of whether it dares to disempower the influential traditional authorities.

Communal Land and Clientelism

Originally, the ANC had wanted to abolish the administrative structure described above, in which traditional authorities were responsible for administering former homeland areas, after the end of apartheid. But it never happened. Then, in the 1990s, violent conflicts broke out between the ANC and the Inkatha Freedom Party (IFP), which was committed to representing the Zulu ethnic group. The ANC compromised in order to bring these conflicts to an end. This has resulted in the traditional authorities now enjoying special status.

In South Africa, 17 million people out of a total population of 58 million live in the former homelands. According to South African law, traditional authorities are supposed to manage the land for the benefit of the communities living there. Decisions about land use are supposed to be taken jointly after intensive consultation.

One concession made specifically to the group of Zulus in KwaZulu-Natal was the establishment of the Ingonyama Trust (IT), which administers around three million hectares of land in KwaZulu-Natal. Zulu King, Goodwill Zwelithini, is the sole trustee of the fund, with a total of nine other members of traditional communities sitting on the board.

Various studies have shown how illegal practices committed by those administering the fund violated the rights of people living on the communal land. They own Permission to Occupy Certificates (PTOs) that guarantee them the right to live on communal land. However, people living on communal land still require a proof of residence from the traditional authorities. This proof of residence allows them to sign contracts and, for example, open a bank account.

The trust exploited the dependency engendered by this situation. In October 2017, it placed an advertisement that promised to give people a proof of residence for an address if they converted their PTOs into a lease. However, the organisation failed to mention that additional costs were incurred. A few weeks later, in addition to the lease

contracts, many people were also sent an invoice for the payment of rent. Moreover, IT concluded contracts with third parties, such as mining, agricultural or other commercial enterprises, which wanted to use the areas it administered. By entering into lease contracts, IT sought to avoid consultation with the communities.

The Motlanthe report finds that the undermining of the rights of people living on communal land, for which the traditional authorities are responsible, has become the rule rather than the exception. According to the report, the practice is particularly widespread in KwaZulu-Natal, but also occurs in other regions of South Africa.

However, Aninka Claassens, a researcher at the University of Cape Town and member of the Motlanthe Commission responsible for land distribution, does not blame only the practices of the traditional authorities for the violation of rights of the rural population. According to her, in the 2000s, the South African Government adopted various bills which increased the scope of the traditional authorities to conduct commercial transactions. As a consequence, it became easier for them to bypass consultation processes. The government also benefitted from this practice when it concluded contracts, for instance with mining companies, without consulting the population. Although this was increasingly practiced under Jacob Zuma, it had also occurred during the term of his predecessor, Thabo Mbeki.

Another aspect comes into play here: South Africa has pursued a policy of Black Economic Empowerment (BEE) since 2001. The policy states that a certain percentage of black people must be represented in the administrative structures of firms and enterprises. Every economic cooperation thus brings advantages for an aspiring black elite — an instrument to counter the injustices of apartheid. In practice, this elite is often closely interwoven with the ANC. Officials from South Africa's Department of Mineral Resources (DMR) are said to have advised firms to negotiate directly with the traditional authorities about contracting because this avoids the need to consult with

the communities — making deals far easier to conclude.

Cyril Ramaphosa began to tackle these abuses as soon as he took office. Since February 2018, the DMR has undergone a fundamental restructuring. One of Ramaphosa's key promises is to curb corruption in South Africa's government agencies.

The debate about how to respond to the practices of the traditional authorities is highly politically charged. The EFF have called for the Ingonyama Trust to be fully nationalised in order to then make the land available to the population. The Zulu king then publicly stated that he was prepared to go to war should the fund be expropriated. During a visit by the king, Cyril Ramaphosa kneeled before him in a symbolic act. The President assured him that he would continue to take seriously the rights of the traditional authorities.

Ramaphosa's gesture was largely misunderstood. It was sharply criticised by those parts of the population that long for a departure from the traditional administrative structures. The ANC, on the other hand, aims to avoid any renewed conflicts with the traditional authorities where possible, not least because they have powerful political representatives.

A conflict with the traditional authorities in KwaZulu-Natal would be an awkward development before the elections, especially for Ramaphosa. KwaZulu-Natal has long been the thorn in the side of the ANC because it is home to the Inkatha Freedom Party. Jacob Zuma was given political support in the province because he himself is a Zulu and had powerful allies. When he was forced to resign by the ANC in 2018, there were protests from ANC supporters in the province. Since taking over the office of ANC leader, Ramaphosa has had to fight for the full support of his party. It is, however, unlikely that the ANC will be able to effectively reduce the power of the traditional elites even after the elections and it will depend on how much support they can muster. Nevertheless, the Trust will have to answer for its actions before a South African court.

Living and Working in Urban Centres

The challenge of creating and allocating urban housing has become at least as important as the redistribution of rural land in South Africa. In 1980, around 43 percent of the population lived in urban areas, compared to 60 percent in 2015. And UN forecasts point to steady growth — up to 80 percent of the South African population could become city dwellers by 2050. Given the growth in urban areas, the population will require more housing in future.

Once again, the question of equity plays a role here. The apartheid regime's housing policies and its distribution of land ownership cemented the structural gap between Blacks and Whites. The effects of segregation between the white centres and non-white outskirts can still be seen today.

Around three million housing units have been built since 1994, as part of a very ambitious social housing programme. Despite this, up to 20 percent of South African households are still located in traditional or informal settlements; the latter have generally been built without official permits. In Cape Town, the richest city in South Africa, 81.6 percent of all households had access to legal housing in 2016. Conversely, this means that almost one-fifth of the population there lives neither in legally secured tenancies nor has legal access to services such as electricity or water.

Social housing units being built as part of the Reconstruction and Development Programme are mostly located in those peripheral neighbourhoods that were allocated to Blacks under the apartheid regime. Many South Africans are deeply rooted in their communities, the township is no longer necessarily a place of social disadvantage. Nevertheless, critics complain that building social housing in the townships, far away from economic centres, promotes segregation.

This form of segregation is riddled with a number of other problems. Many people have to travel long distances to reach urban centres. This is very costly and jeopardises

their chances on the South African labour market. Many sleep on the streets in city centres or in squats during the week so they can get to work more easily because of the high travel costs and long distances.

According to a survey conducted by Statistics South Africa in 2015, more than two-thirds of households who fall in the lowest income quintile spent more than 20 percent of their monthly household income per capita on public transport, while less than three percent of households from the highest income quintile spent more than 20 percent of their monthly household income per capita on transport.

The South African government has launched several programmes to address these problems. Under the slogan, “Corridors of Freedom”, it initiated the construction of a local and long-distance transport network to improve mobility and thus bring about economic and social equality. But, as the example of Johannesburg shows, approaches implemented so far have not been successful in eliminating social segregation. To date, it is mainly members of the middle and upper classes that use the “Gautrain”, a modern express train that links economically significant districts in Johannesburg and in Pretoria. The train is too expensive for anyone on an average income. They prefer to take buses operated by Rea Vaya which are more affordable. As before, however, a large part of the population still travels long distances on foot or uses the informal system of minibuses, which also links the outskirts of urban areas.

Today, racially segregated groups tend to mix more when black South Africans climb the social ladder and then subsequently move into formerly white residential areas. There are various efforts in South Africa to overcome segregation. For example, the City Support Programme (CSP) aims to create mixed residential and working areas that offer better mobility and more accessible services. One challenge for urban planning is to find a balance between pub-

lic responsibility, private sector investment and community participation. Above all, this requires time and patience.

However, it is already possible to set aside land in urban areas for housing at short notice. For example, the government could develop unused state housing in South African cities or improve the infrastructure in existing informal settlements. State-owned land could be made available to create affordable housing without much effort. Lastly, long-term concepts are needed for sustainable development in urban centres.

Potential Frustration

Analyses have clearly shown that the hotly debated issue of expropriation without compensation is only one element of land reform in South Africa. The assertion that South Africa’s unequal distribution of income could be virtually wiped out by expropriating land owned by Whites is merely an empty promise peddled by predominantly populist forces. Nevertheless, they have managed to force the ANC to change course.

The latest Afrobarometer survey highlights the importance of a fairer distribution of resources among South Africans: 62 percent of respondents said they would be prepared to give up their right to vote if they had access to service delivery (such as water or housing). Widespread dissatisfaction has led to an increase in the number of political protests in recent years.

South Africa is still a country with democratic principles and well-established institutions that were damaged but not destroyed by Jacob Zuma’s ‘state capture’. A large share of the population is critical of expropriations without compensation: 53 percent support the principle of ‘Willing Buyer, Willing Seller’. However, the government’s consultations also show that disadvantaged groups in particular are in favour of a more radical approach and of expropriation without compensation.

In all likelihood, the next South African government will again be led by the ANC. It will be confronted with the task of implementing a land reform with fast and visible results, but which will nevertheless be carried out according to the rules of democracy. Renewed failure to redistribute land would compound the population's already considerable sense of frustration.

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SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3–4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

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Dr Melanie Müller is an Associate in the Middle East and Africa Division at SWP. Laura Kotzur was an intern in the Middle East and Africa Division at SWP.

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