



THE REPORT OF THE PRESIDENTIAL ADVISORY PANEL ON LAND REFORM AND AGRICULTURE

The Final Report of the Presidential Advisory Panel on Land Reform and Agriculture, which was released to the public on 28 July, is already causing uncertainty and concern over the future of agriculture and property rights in South Africa. Two of the Panel's 10 members, Dan Kriek, the President of Agri SA, and Nick Serfontein, a commercial farmer, have issued a minority report rejecting many of the Panel's main recommendations.

The Panel was appointed by President Ramaphosa in September 2018 to "provide a unified policy perspective on land reform in respect of land restitution, land redistribution and land tenure reform". It was also asked to report on the circumstances in which expropriation without compensation (EWC) should be applied and the procedures and institutions that should be involved in its implementation. Finally, the Panel was asked to work towards:

- a uniform policy on land redistribution that takes into account race, class and gender imbalances;
- a policy on compensation for expropriated land; and
- a policy for reforming the institutions and State departments involved in land reform.

On the key issue of EWC, the Panel recommended that the "exceptional circumstances that may warrant expropriation without compensation" should be dealt with by the insertion of a new section 25(2)(c) in the Constitution that would require Parliament to "enact legislation determining instances that warrant expropriation without compensation for purposes of land reform envisaged in section 25(8)."

The legislation that the Panel has in mind is the *Expropriation Amendment Bill* that states that "It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including, *but not limited to*:

- where the land is occupied or used by a labour tenant, as defined in the *Land Reform (Labour Tenants) Act, 1996*;
- where the land is held for purely speculative purposes;
- where the land is owned by a state-owned corporation or other state-owned entity;
- where the owner of the land has abandoned the land;
- where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land."

The Panel recommended that compensation for expropriated land should be determined in accordance with regulations that would be promulgated under the *Expropriation Act*. "This should outline a compensation spectrum, ranging from zero compensation to minimal compensation, to substantial compensation, to market-related compensation. It should provide a typology of situations and indicate how compensation should be approached in each. For instance, property owners who bought land since 1994 should not be treated the



FW de Klerk
FOUNDATION

same as those who inherited property. Big institutional owners who have large property portfolios should not be treated the same as families whose land is their primary livelihood asset.”

The Panel noted that “31 million South Africans hold land and dwellings outside the formal property system”. It called for the priority adoption of a *Land Records Bill* to enable such people to record and register their property. These people include “residents of informal settlements, farm dwellers, labour tenants, residents of communal areas, and others”.

The Panel took a sympathetic view of customary and communal land ownership, which it felt should be included in the classic definition of what constitutes property, capable of legal recognition and equal protection by the law. It observed that were, *de facto*, four forms of land tenure including open access tenure, communal tenure, private ownership and State ownership.

The Panel also recommended that:

- the legislation that had established the Ingonyama Trust - which owns the vast lands once occupied by the KwaZulu homeland - should be repealed;
- there should be a moratorium on farm evictions - even though this might negatively affect the rights of land owners in terms of section 25;
- the 1913 cut-off date for land restitution should be scrapped;
- churches, mines, municipalities and other land holders should consider making voluntary donations of under-utilised land - for the purposes of land reform;
- there should be restrictions on future foreign land ownership;
- land ceilings should be imposed “to limit the total area of land that any one individual or company may own, so as to limit and reverse the trend towards concentration of land ownership, which is antithetical to land reform”;
- corruption-free institutions should be created or strengthened to finance and oversee the land reform process, including a Land Reform Fund, a Land and Agrarian Reform Agency; a Land Depository (for donated land); and a Land Ombudsman;
- the Office of the Valuer-General and the Land Court should be strengthened;
- there should be a Land Tax Inquiry to consider the imposition of rates on agricultural land “so as to disincentivise the retention of large and unproductive landholdings;”
- a comprehensive land audit should be conducted by the relevant government departments in cooperation with “existing private sector-driven audits”.

In their minority report, Kriek and Serfontein expressed their support for many of the Panel’s recommendations but strongly opposed EWC and several other key recommendations.

They identified the factors that had thus far led to the failure of most land reform initiatives and pointed to successful land reform initiatives that had been implemented by the private sector. They made a number of suggestions for a cooperative approach to land reform and



FW de Klerk
FOUNDATION

identified the very negative consequences of EWC for food security, for commercial agriculture and for the South African economy.

Where the Panel claimed that 41.6% of people in rural areas, and 59.4% in urban areas experienced severely inadequate access to food, Kriek and Serfontein pointed to the fact that South Africa enjoyed greater food security than any other African country and that the percentage of people with limited or complex access to food had declined from 29.1% in 2010, to 24.7% in 2017.

Kriek and Serfontein also pointed out that although the number of farmers had dropped by almost 40% - to just 35 250 in only three years between 2013 and 2016 - they still continued to produce increasing amounts of food for domestic and export markets.

They noted that 60% of farmers generate a turnover of less than R500 000 per annum and are thus not in a position to make much of a contribution to land reform. Only 7% - mainly agribusinesses - make more than R20 million p.a. Yet it is this group - who produce most of South Africa's food - who would be most seriously affected by the capping of farm sizes.

They went on to stress the degree to which EWC would impact the ability of farmers to raise the loans to plant their crops each year. Farm debt has grown from R70 000 billion in 2010 to more than R160 billion last year. This debt - and the willingness of banks to lend more - depends directly on the security of farmers' property rights. All this has contributed during the past year to a 12-point decline in the Agribusiness Confidence Index - from 54 to only 42.

The Panel's Report is the latest episode in the sad and divisive saga of land reform since 1994.

The Panel made some very positive recommendations - particularly the idea that the property rights of all South Africans should enjoy some form of legal recognition; its acknowledgement of the need to combat corruption and bureaucratic inefficiency; and its proposal for a definitive land audit - something the Foundation has repeatedly called for in the course of the last few years.

The Constitution requires land reform - and right-thinking South Africans of all races accept the need to redress the present racially-skewed property relations. Unfortunately, the whole debate has become so embroiled in South Africa's vexatious racial politics and so entangled in the ideological agendas of the various ANC factions that it was impossible for the Panel's members to find one another on many key issues.

The problem is encapsulated in a remark by the Panel's Chairperson, Dr Vuyo Mahlati, in the introduction to the Report when she said that "the Panel therefore advocates for clarity of vision and outcomes and a future where land ownership must approximate the demographic of the country..."

Aye, there's the ideological rub: white South Africans comprise 25% of the population over the age of 75 - but less than 5% of those under the age of five. What is the Panel saying about



FW de Klerk
FOUNDATION

the medium and long-term future of the 30 000+ white farmers who continue to produce - in a very efficient manner - nearly all the food that South Africans eat? What is it saying about the idea at the heart of our Constitution that South Africa is supposed to be a non-racial State?

Is there any reason to believe that the Panel's ambitious recommendations for the adoption of yet more legislation and the appointment of yet more oversight institutions will be any more successful than any of its predecessors? Will there, this time around, be the political will and the capacity to drive the process? What will the legal and administrative consequences be of scrapping the strongly negotiated 1913 cut-off date for land restitution? How would ceilings on land ownership affect investor confidence and food security?

In the final analysis there is one adamant law that neither the ANC nor Parliament can repeal or amend - the law of unintended consequences: "When states interfere in normal economic processes for ideological purposes the result of their action is nearly always the opposite of their intention."

The FW de Klerk Foundation will closely monitor developments relating to EWC during the coming weeks. We shall continue to oppose ideological and race-based threats to property rights. We shall continue to support a balanced approach to land reform that will enhance and entrench the property rights of all our people - and particularly of black South Africans. The future of our economy, food security, national cohesion and the wellbeing of all South Africans will depend directly on our ability to uphold the constitutional agreements on property rights that we negotiated in good faith 26 years ago.

Issued by the FW de Klerk Foundation
5 August 2019