



FW de Klerk
FOUNDATION

WHAT WENT WRONG WITH LAND REFORM OVER THE PAST 24 YEARS?

By Theuns Eloff: Executive Director, FW de Klerk Foundation

There is a common view among some South Africans that after 24 years of democracy, less than 10% of the land in South Africa belongs to the majority of the population. Someone began to circulate the narrative that the biggest issue relating to the slow pace of land reform is the 'willing seller, willing buyer' principle - and that this is prescribed by the Constitution (which is untrue). Together with this, the second biggest obstacle is described as the "equitable compensation" for land, which is prescribed in section 25 of the Constitution. That's where the call for expropriation without compensation (EWC) originated and gained momentum. Change section 25 of the Constitution, return land without any compensation and the "original sin" will simply vanish in a flash!

What really went wrong? Who should get the blame? Is it the property owners who resolutely cling to their (for some, stolen) land? Is it the estate agents and brokers? Section 25(5) requires that the State "must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis". Furthermore, 25(8) states: "No provision of this section may impede the State from taking legislative and other measures to achieve land, water and related reform, in order to correct the results of past racial discrimination". So land reform is, according to the Constitution, the responsibility of the State.

Every South African has his/her own opinion about where things went wrong. Some have lived experience, others hearsay, and others just have their own opinion. However, a particularly authoritative source was published in November 2017. It is a Report from an inquiry commissioned by Parliament's Speakers Forum. The mandate was: evaluate the legislation of recent years and investigate how to accelerate fundamental change in South Africa. The Report took nearly two years to complete and was researched and compiled by an impressive Panel of 11 prominent South Africans, including former politicians, lawyers, auditors and academics, and chaired by former President Kgalema Motlanthe. The Report is 600 pages long - 100 of which are dedicated to land reform. After months of research, submissions and oral evidence gathered in each province, what were the Panel's findings?

Land reform is an overarching term that includes land redistribution, land restitution and security of tenure. Redistribution refers to the process of land which is up for sale being acquired by black owners, or the State. Restitution is the process whereby people whose land was taken by the State or other institutions post-1913 may be reclaimed; and security of tenure relates to workers on farms, and inhabitants of the former homelands, who have been living on, or working their 'own' land for many years but have no formal or individual property rights.

The Motlanthe Report draws powerful conclusions.

The **first** of these is that compensation for land is not the main obstacle to land reform, but rather that it is corruption by officials, the diversion of the land reform budget to elites,



FW de Klerk
FOUNDATION

the lack of political will by government, and the lack of training and capacity within the State.

The **second** factor is the lack of a budget (resulting from the lack of political will) for land reform. The Report shows that in 20 years the budget did not even keep pace with inflation and amounts to a paltry 0.4% of the national budget.

Thirdly, the Report shows that instead of empowering and advancing new property owners, they in effect, become ‘tenants’ of the State. This is because they do not get title deeds for the land allocated to them - and therefore cannot use the land as collateral for loans to buy cattle, seed, feed and equipment.

In the **fourth** place, the Report found that the government did not effectively wield its constitutional powers to expropriate land for land reform purposes, and further did not make use of the constitutional provisions that allow compensation to be less than market value in certain circumstances.

Fifthly, the Report found that the State did “not adequately promote, enforce and protect” the rights of vulnerable South Africans as per section 25(5), (6), (7) and (9), and that these rights are in fact under attack through “policies and practices” that wanted to redirect the benefits of land reform to potential political alliances and specific elites.

Other reasons are also mentioned, and all have to do with the execution of the State's mandate. Of course, corruption is a two-way process, and non-governmental organisations and individuals may not have participated in land reform as enthusiastically as they could have, but the fact remains that this Panel, chaired by a former President, places the blame for slow and inadequate land reform almost exclusively on the State. In addition to corruption, lack of capacity (read: weak officials), budgets, lack of title deeds, poor legislation and poor implementation of existing legislation are the other major stumbling blocks.

In addition, the Report, in its recommendations, takes a strong stand regarding an amendment of section 25. Rather than amend section 25, the government should use its expropriation powers more boldly, in ways that test the meaning of the compensation provisions in section 25(3), particularly in relation to land that is unutilised or underutilised, in particular, land that already belongs to the State. It is clear: the Parliament-appointed independent Panel does not recommend that section 25 be amended, or need to be. It is primarily the State that has failed its duty to carry out the constitutional mandate on land reform.

The message is strong: if the State wants to implement its constitutional mandate correctly, the right legislation must be drafted, it must be correctly implemented, it must be effectively and transparently implemented by competent officials, and enough money must be provided. There is no talk of “swift” land grabs through expropriation without



FW de Klerk
FOUNDATION

compensation, but rather a thorough process, in keeping with section 25 of the Constitution of South Africa.

It is understandable that the EFF would not wish to hear this message in Parliament. After all, they are completely ideologically slanted to land reform and are making EWC their election slogan. Rather, it is the responsibility of the ANC, the party that initiated the Motlanthe Report, to pay close attention to the Report's overarching message.

Even with a change to section 25 that enables EWC, land reform will not happen - not when the underlying problems of corruption, the lack of a legislative framework, state capacity, political will and money do not even get attention. A constitutional amendment is a walk in the park compared to solving these problems. They require urgent attention.

First published in Afrikaans on Netwerk24