

REPORT

REFOCUSING THE SOUTH AFRICAN LAND DEBATE

**WHAT CAN WE DO TO ACHIEVE
SUSTAINABLE PRO-POOR LAND
REFORM IN SOUTH AFRICA?**

by Dr. Rick de Satgé

SUMMARY OF THE DEBATE

This moderated online dialogue was facilitated by **Phuhlisani NPC** in association with the **Land Portal**. Phuhlisani NPC has drafted this report on the key issues surfaced through the dialogue.

DIALOGUE OBJECTIVES

The dialogue provided an online forum to explore different perspectives on the content of a pro-poor programme of land reform programme that can:

- » Actively promote equitable access to land in rural and urban areas to tackle spatial and economic inequality;
- » Provide tenure security for 60% of South African citizens whose property rights remain off-register;
- » Grow and support small producers and contribute positively to the livelihood security of marginalised rural and urban South Africans; and
- » Address the current shortcomings affecting existing restitution, redistribution and tenure reform programmes.

DIALOGUE FORMAT

The ten questions below provided the overall framework for the online dialogue.

1. What is land reform for?
2. How exactly can access to land support the livelihoods and wellbeing of poor people in South Africa?
3. What has been relationship between the costs and benefits of land reform to date?
4. What has worked with land reform in South Africa: where and why?
5. What needs to be done to get closure on land restitution and accelerate rural land redistribution?
6. How can we improve access of the urban poor to well located land in the city and tackle the effects of spatial inequality?
7. What can be done to secure the land rights of an estimated 60% of South Africans whose land rights remain off register in rural and urban areas?
8. How do we deal with the politicisation of land reform, and its connection with the national and the colonial questions?
9. How do we obtain reliable open data to better understand who owns what and monitor the performance of the land reform programme?
10. What should be the key elements shaping land policy and a land reform framework law to ensure that land reform benefits poor South Africans and does not become a vehicle for elite capture?

OPENING THE DEBATE

The debate opened with a focus on the first two questions:

QUESTION 1: WHAT IS LAND REFORM FOR?

The discussion developed slowly at first, but raised a number of important questions. The facilitator highlighted the constitutional mandate for land reform with a brief review of section 25 of the constitution. This explicitly requires the state to pass legislation to ensure tenure security, enable restitution for the loss of land rights since 1913 and to progressively promote equitable access to land. The constitution also provides a framework for the expropriation of land – which includes the possibility of expropriating land without compensation, while providing for just and equitable compensation. The discussion opened with a focus on the broad politics, economics and meanings associated with land to identify the different framings and often fundamentally contested understandings of the land question in South Africa.

There were a number of perspectives on what land reform is for. These included:

- » Providing redress;
- » Advancement of the rights of all to property;
- » Addressing stark structural inequality and poverty;
- » Bringing about economic transformation;
- » Providing (well located) land for housing both in the urban and rural areas including on farms;
- » Addressing the fundamental imbalance in South African society;
- » The protection of the vulnerable;
- » The political role of land reform to address the felt historical legacy of colonial dispossession and apartheid forced removals and the necessity of restorative justice;
- » The developmental and economic function of land reform and the important role of access to land as a safety net and cushion for the poor;
- » The changing of the spatial geography of apartheid and making available serviced land for housing close to towns and cities and to places of work.

An interesting and in-depth conversation developed over how to **value and tax land**. There were strong arguments advanced that “as long as land has a marketable value it will be treated as a commodity, and it will be bought and sold; and as long as it is bought and sold some people will accumulate it and others will lose it”. This led to the argument that we needed to find a way to permanently address imbalances in the ownership of land and that a land tax was probably the only way that this could be achieved. This explored the prescriptions of Henry George who argued that a land tax could decommodify land, lowering the barriers to entry and making it difficult for inequitable land ownership to persist. Questions were raised about:

- » Possible **unintended consequences**;
- » Whether there was any successful examples of this internationally;
- » What the mechanisms would be to proceed from the status quo to a Georgist style land taxation regime.

Examples were given from South Korea and India of government driven land valuation systems with the caveat that these were expensive to run and keep up-to-date. However, it was also acknowledged that they could give the state considerable leverage over the kinds of development they wanted to see happen on the land.

There was also the observation that where people held land for speculative purposes in urban settings it was seldom left undeveloped. Property owners rather develop the land at the lowest feasible level for the area, in anticipation of a time when the value of land would rise to the point where it made economic sense to demolish the original buildings and redevelop the sites.

There was also an important discussion about the nature of the rights guaranteed through Section 25. There was debate about whether the constitution should be revisited not just with respect to clarifying expropriation but to include a **right to access land**. It was noted that the right to land is not an internationally recognised human right. There were concerns raised about how to practically realise such a right and an alternative position was advanced that the current obligation of the state to promote equitable access to land should stand, but this be given content through a **Land Reform Framework Act** (see below), while progress in achieving this objective be better monitored.

It was noted that one of the key proposals emerging from the **High Level Panel** was for the promulgation of a Land Reform Framework Act to establish core principles to guide, align and direct the different aspects of the land reform programme in order to:

- » Operationalize 'equitable access';
- » Establish in law the guiding principles for redistribution, restitution and tenure reform;
- » Set legal criteria for beneficiary selection; land acquisition and the choice of land for redistribution;
- » Provide measures to ensure transparency and accountability.

QUESTION 2: HOW CAN ACCESS TO LAND CONTRIBUTE TO LIVELIHOOD SECURITY?

It was argued that land reform should enable forms of pro-poor, inclusive development that provide economically marginalised people with some kind of 'foothold.'... which serves for the poorest of the poor as a cushion, a **safety net**.

This had to be conceptualised across a wide range of settings:

- » In cities and towns;

- » On the farms;
- » In the former homelands and reserves;
- » On land already acquired through land reform.

This meant that there was no 'one size fits all' recipe for land reform. Similarly the potential for livelihood improvement would **vary substantially** across these different settings.

It was emphasised that there is a need to (re)define access in the context of local realities in South Africa and this should be viewed beyond mere physical (re)possession or ownership of land. It was essential to link land access to support to enable those who have secured access to land to put it to good use. Particular emphasis was placed on ensuring that **women** are prioritised with respect to land access, while simultaneously recognising that women are not homogenous group.

Farm dwellers and former labour tenants were identified as particular constituencies to be prioritised to benefit from land reform. Again there were concerns raised about the dangers of 'one size fits all' approach to policy-making and programme design. This emerged as a recurrent theme in the discussion. However it needs to be recognised that moving beyond 'one size fits all' to more discretionary and context specific approaches poses significant challenges for the development of transparent policy and the equitable design of programmes. A contribution explored the **categories approach** which differentiated those in search of land and the different situations in which land need is rooted. More discussion is needed on how to practically move beyond 'one size fits all' solutions.

QUESTION 3: WHAT ARE THE COSTS AND BENEFITS OF LAND REFORM TO DATE?

There was limited uptake on this question. However an important contribution indicated the **disconnect** between the current approaches to land reform and food security and the literature on sustainable development and climate change. It was noted that while internationally livestock farming had been identified as an important driver of climate change this sector has huge sociocultural traction South Africa. It was highlighted that only 1% of South Africa has the right climate and soil combination for rainfed crops and only 3% of the country has truly fertile soils. Overall only 13% of the land is arable while 69% is good for grazing. With respect to urban development there is a significant policy disconnect between infrastructure provision and the sustainability of ecosystem services which urban infrastructures depend on. Back in 2006 it was calculated that Cape Town's ecological footprint was 4,28 hectares per capita requiring the equivalent of 2,3 planets.

This discussion suggests that the long-term ecological costs of our current land use and agricultural trajectories in urban and rural areas are significant and that these need to be integrated into a debate about the design of a pro-poor land reform programme.

QUESTION 4: WHAT HAS WORKED WELL WITH LAND REFORM IN SOUTH AFRICA?

It was hoped that the insertion of this question would result in those representatives from organised agriculture putting forward their examples of land reform success stories. However, the discussion took a different direction with an important contribution noting that what had worked best where land reform was concerned was land reform from below. Examples were given of **land occupations** on state owned land in rural settings as well as the development of informal settlements in urban contexts.

In a supporting link it was noted that:

“Current government procedures for dealing with land claims and redistribution projects tend to disempower the beneficiaries, especially the poor and those with little education. Furthermore, the current paradigm sees the CRLR and DLA (DRDLR) pushing people into large-scale commercial farming... Given the dominant view and the snail’s pace official land reform the occupation of unused land offers poorer away whereby they can shape their own land reform initiatives and livelihood needs.”

This highlights a key failing of the land reform programme which has been to provide what the majority of poor people actually want. Research into land needs have highlighted demand for relatively small pieces of land. At the same time there was an identified need for improved and affordable approaches for recording land rights and ensuring that registration processes do not **discriminate against women**.

QUESTION 5: HOW TO GET CLOSURE ON RESTITUTION AND SPEED UP REDISTRIBUTION?

This question was not discussed in great depth. However it was clear from the introduction that the restitution process, which was originally conceptualised as taking about five years, is likely to drag on for many years to come. A further level of complexity has been introduced with the passage of the Restitution of Land Rights Amendment Act in 2015 which reopened the land claims process. Subsequent legal action found that the act had been introduced without adequate public consultation and that reopening land claims would impact on those who had already lodged claims that remained unsettled. The likelihood of conflicting and overlapping claims in land would make the restitution process even slower and more costly.

A **contribution** argued that the restitution programme had been a failure and that the programme needs to be ended and land claims dealt with through the land redistribution channels.

With regard to speeding up redistribution a contribution based on a submission to the Constitutional review committee argued that **expropriation** would speed up access to land. The contribution highlighted that colonial land seizures involved no compensation and no legal process.

QUESTION 6: HOW TO IMPROVE ACCESS OF THE URBAN POOR TO WELL LOCATED LAND?

A **contribution** provided important contextual analysis of the urban land question. It was noted that 66% of South Africa's population now lives in cities and around 30% of that population is poor. Urban migration has increased the demand for well-located urban land. There has been an increase in the number of freestanding informal settlements while backyard accommodation in established settlements has grown even faster. Most housing has been located on the urban periphery which has entrenched the spatial geography of the apartheid city.

A discussion developed on the challenges facing so-called mixed use housing development which combined housing stock of different values and purported to enable poor households to access well located land. Questions were raised around what was to prevent the poor being bought out in such developments and being forced to relocate back to the urban periphery. There were **arguments** for long-term land-use approaches to protect lower value land use of less wealthy people and to use times of economic boom to produce large quantities of housing stock for middle-class people with the long-term aim of waiting until the stock degrades and rents are more affordable for low income people. The importance of taking the long view with regard to urban planning was emphasised.

QUESTION 7: HOW TO SECURE THE OFF-REGISTER RIGHTS OF 60% OF SOUTH AFRICANS?

Contributions focused on processes to collect **evidence** in order to record rights and local processes of counting homes using available software resources such as Google Earth in combination with participatory processes to map land uses at locality scale. This also needs to inform statistical data collected by StatsSA to better distinguish the different tenurial settings in which people live ranging from privately owned land, land in the former bantustans and land acquired through land reform.

A contribution proposed the development of a separate institution to develop and promote land administration reform which would move us from rhetoric about securing land rights to long-term planning over a 20 year trajectory. There were strong **arguments** that land governance and land administration should take on a much higher profile in the South Africa land debate. There were proposals for a series of pilots which would culminate in a Land Administration Framework Act and processes to guide land rights adjudication that would take into account customary law. This would need to feed into the ultimate development of a digital system of land records.

An in-depth **contribution** reflected on the property system in South Africa noting that the system had been designed to explicitly exclude majority of the inhabitants of the country. In 1994 an alternative had been proposed, an aspirational ideal of a wall-to-wall cadaster in which everyone would have their own plot of freehold land consistent with the De Soto vision. Given South Africa's history of dispossession and discrimination it was difficult to argue against such an aspirational ideal. However practice post 1994 suggests that a land administration system based on this premise cannot be made to work for everyone. Even where people have acquired title they find that the transactional costs associated with buying, selling or inheriting a piece of land are unaffordable. This leads to the breakdown of the system.

“So we are faced with the paradox that the ideal falls into redundancy even before it started, even while it cannot catch up with the needs of the majority population”.

The contribution summarises the global shift towards a more inclusive approach of recognising a land rights continuum, but argues that this cannot be achieved in a context where state institutions and governance have broken down and taken over by predatory and corrupt elites.

It was argued that a mind shift is required to recognise that land is therefore everyone and that land and homes provide important security for the poor to which enormous value is added in the form of services – access to water, sanitation, transport, health, education and economic opportunity. Overall we need to develop an integrated view of land access and governance, rather than the narrow sectoral rural, urban, social and economic approaches which have characterised the approaches to land reform and urban planning to date.

QUESTION 8: HOW DO WE DEAL WITH THE POLITICISATION OF LAND REFORM?

While there have been concerns that the land reform debate has been clouded with political opportunism there is also an important **recognition** that the recent constitutional review process has initiated a national conversation. However at present the conversation is vertical rather than horizontal with public hearings enabling citizens to speak to parliamentarians, as opposed to citizens talking to each other. Currently the focus on the more technical aspects of expropriation without compensation are not addressing the real issues which are essentially about achieving a just and equitable South African society.

One of the consequences of the politicisation of land issues is the impetus to try and find quick fix solutions. A **contribution** highlighted the mismatch between the five-year horizons of those in power and the time required for meaningful land reform implementation which often required a 20 year planning framework supported by significant numbers of support personnel. One of the downsides of the politicisation of land reform was the expectation that rapid solutions could be found. In practice, land reform remains a slow process, involving engagement on many different fronts – land acquisition, land development support, land governance and administration.

A supporting **contribution** noted that politicisation of land issues is unavoidable in the South African context, but supported the need for a long-term strategy. With respect to land administration and governance evidence needed to be gathered through a series of pilots which could inform the design of appropriate systems to accommodate a continuum of land rights.

QUESTION 9: HOW DO WE SECURE LAND RIGHTS THROUGH OPEN DATA IN SOUTH AFRICA?

A contributor **argued** that access to open data is a constitutional imperative rather than a nice to have. He drew on the preamble to the South African constitution highlighting the references to an open and democratic society, accountability in public administration and transparency enabled by citizens' access access to information to exercise and protect their rights.

The discussion did not engage with the more operational and technical dimensions of open data and the ways in which these enable mapping, provide information land rights and land transactions.

QUESTION 10: WHAT ARE THE KEY ELEMENTS TO SHAPE NEW LAND POLICY AND LAW TO ENABLE IT TO BE PRO POOR?

A contribution from an earlier part of the discussion was cited to highlight the urgent need for a more informed multifaceted, deep discussion on land issues. South Africans have a an an increasing aversion to engaging with complex issues. Different actors rather sought to develop simple persuasive storylines and singular solutions. These often look backwards rather than forward and sideways.

"[W]hen South Africans consider the future of our farmlands, we tend to ignore the realities of rural de-agrarianisation, corporate control, and small farmer marginalisation. Rather than asking searching questions about how our agricultural and food system should be managed to ensure livelihoods and food security for us today...[q]uestions of equity tend to be framed as questions of restorative justice (how to redress the wrongs of the past) rather than question of distributive justice (how to ensure that everyone gets a fair share now)"

A **contributor** argued that from a property law perspective the hierarchy of rights needed to be flattened so that the rights of an owner did not automatically overwhelm other rights. She pointed to the way in which section 25 of the constitution had been drafted in a bid to strike such a balance.

The final question in the discussion revisited an exchange between leading land sector researchers concerning the need to redistribute land at scale and the potential of land reform to make a major contribution towards reducing South Africa's spiralling unemployment rate which is the key national development priority. This included the need to transform the agri-food sector as a whole to be pro poor noting that deregulation and liberalisation of the agricultural sector have shifted value from farmers and producers to supermarket chains while leaving many poor households unable to afford an adequate diet. A **contributor** cautioned that "no redistribution of land is

going to succeed to change the current crisis of hunger, poverty and inequality without dramatically transforming the wider agri-food sector. It was argued that land reform needed to incorporate **pro poor action plans** which took into account the needs of the majority of South Africans living in poverty. It was noted that if land reform fails to benefit the poor then the reform process as a whole fails. The design and implementation of appropriate land reform programme requires a realistic timeline of between eight and 12 years. If the timeframe is set too distantly then motivation fails as poverty requires urgent action now. This plan needs to ensure gender equity and to build political alliances to garner support for the programme as a whole.

Overall participants highlighted the need for stabilising land reform initiatives by recording relationships arguing the proper records clarifying rights in land key to the sustainability of pro poor land reform. There was a strong argument to focus on achievable priorities. A contributor **singled out** the following elements as key components of the land reform strategy going forward

- » A massive new urban housing programme which in smaller towns should also include access to larger plots or allotments for gardens and other uses
- » Urgent completion of the first phase of restitution and provision of effective support to those whose rights were stored
- » Encouraging a national conversation around criteria for success and developing a shared analysis of the causes and consequences failure
- » The need for a more proactive state which recognises that the key problem is not shortage of land but the range of constraints which prevent livelihood enhancement and diversification.
- » Being more responsive to actual land needs by enabling subdivision and creating synergies between urban and rural economies
- » Recognising and responding to the need for services
- » Providing secure tenure and prioritising land with access to water and local markets

Focusing on farming a **contributor** highlighted the need for innovation in the type of services provided to small farmers, backed by research into low-cost and resilient farming practices suitable for South African conditions. She cautioned against the predominance of binary thinking - either/or logic models, arguing for the need to recognise the many different sizes scales, styles, farming and markets.

Others argued for a needs-based approach and for a national consensus on what we want to achieve through land reform and who the programme should prioritised. This could be provided by the Land Reform Framework Act which had been prioritised by the HLP.

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CONCLUSIONS

The report highlights the wide-ranging nature of the discussions held and provides some indication of the depth of content and attention to detail paid by many of the participants. While there were many practical and well-argued ideas put forward there remains an underlying underlying concern that the national conversation on land is at risk of being hijacked by short-term political interests. Many ordinary citizens and activists within the land sector are grappling with what has been described as the **public policy futility trap**.

This is fuelled by the inescapable conclusion that while there have been so many conversations, activist campaigns, precedent-setting legal cases; so much research, so many panels and reports, there has been so little progress in understanding and resolving the land question. Much of this points to fundamental incapacity within the state and fragmented relationships between the different actors in the urban and rural land sectors.

As a contributor has argued that with an election looming in 2019 the land question “will be exploited for all that it is worth, while very little will be done to resolve it”.

“There is no reason to expect that professional politicians should be able to resolve as complex and wide-ranging a question as that around land. They are far too conflicted and self-absorbed for that.”

He suggests a way forward:

“The resolution lies in the hands of the people who grapple daily with the problem; and in the hands of the communities they form and the organisations they bring into being... Civil society needs to keep finding ways of helping to articulate the views of those most deeply affected by the land question, and to try to amplify those views above the present political noise.”

At the same time it is imperative that these discussions are deepened, shared and translated into practical proposals shaping policy, law and implementation.



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