

Failed land reform projects: Who should foot the bill?

By HJ Moolman

The Restitution of Land Rights Act, 1994 (Act 22 of 1994, i.e. the Restitution Act) is the oldest legislation from a hierarchy of acts aimed at regulating South Africa's land reform process and providing justice to people who were disadvantaged based on race before 1994.

Several other acts were promulgated to ensure the restitution of rights, as well as to ensure more security of tenure and the redistribution of land.

This year marks our 23rd year of democracy, and many South Africans believe that land reform has failed. The government, however, is of the view that more radical steps need to be taken for land reform to succeed, and that the cost of land reform should be transferred to private land owners whose land should be expropriated without compensation.

Basis of compensation

In support of this argument, the main scapegoat for this radical approach is the basis of compensation for existing land owners from whom land was bought to settle claims. The courts consistently maintained the position that the basis of compensation must be a market-related price determined by sworn valuers.

Since 1994, the biggest percentage of the state's annual budget allocated to the purchase of land for land reform

and its administration was 2,5%. This indicates a major contrast between the political priority that was placed on land reform, and the extent to which the state was prepared to commit financially to this goal.

The *Restitution Act* produced approximately 75 000 land claims before 31 December 1998, and although the act determines that certain minimum requirements must be met before valid claims can be published in the *Government Gazette*, extremely little and very low-quality work caused thousands of claims without merit to be published.

Increased land value

The publication of these claims and the accompanying encumbrance of land did not only increase the administrative and handling costs of claims, but also undoubtedly increased the value of unencumbered land that was not part of claims.

Apart from other aspects that could in fact have increased land value, the lower offering of unencumbered land and higher demand contributed to higher values, which eventually became the benchmark of the comparable transactions mentioned previously.

The land obtained by the state was transferred to communal property associations in communal possession. As land was transferred with little and in some cases no support after establishment, 90% of these projects failed. Even programmes to recapitalise land and to pair new owners with mentors (existing and retired farmers) to control farms did not yield significant results.

Regarding security of tenure the legislation, to a large extent, constrained illegal and arbitrary evictions.

It is disappointing, however, that millions of rand was spent to finance litigation in court against land owners with valid grounds for legal evictions, instead of using the money to permanently relocate farm dwellers elsewhere with the help of land owners.

On the other hand, this legislation resulted in owners who were no longer prepared to provide accommodation to people working on their farms. The result was that thousands of people took refuge in informal settlements around rural towns.

No quick fix

The redistribution of land and the purchase of land by the state from willing sellers are not without challenges.

The limited ability of the state to carry out and complete these transactions within a reasonable period of time, for instance, has forced many land owners to secure their own survival by withdrawing their land from transactions with the state and finding other buyers.

Irrespective of the manner in which government will tackle land reform in the foreseeable future, the realities of the past cannot be solved merely by new ownership of land. We will have to wait and see whether sound judgement regarding land reform, which will not be to the detriment of food security and the economy, will triumph. 🍌

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