

## **The Land Question: Exploring obstacles to land redistribution in South Africa.**

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### **Introduction**

The pace of land reform in South Africa is undeniably slow. This is a fact that has also been acknowledged even by the President of South Africa, Thabo Mbeki when he delivered his State of the Nation address in February this year, 2007. However, while there may be general acceptance that the South African land reform programme is not occurring fast enough, there is no agreement on the reasons. There are those who argue that the fundamentals in terms of policy and legislation are in place and that the main problem lies with the implementation of these policies. Proponents of this view go on to blame lack of implementation on what they perceive to be lack of capacity on the part of those who are supposed to drive and implement policy. On the other hand, there are those who argue that there are fundamental structural and policy problems that impede the achievement of the objectives of land reform, limited as they are.

In this paper, I will make a quick survey of the land reform programme before considering obstacles to the achievement of what I consider to be very limited land reform objectives, given the history, nature and extent of land plunder in South Africa. In considering the obstacles, I will focus on two key issues: the entrenchment of the property clause in the constitution and the weakness of civil society organisations that could apply pressure on government from below. My key argument is that the entrenchment of the property clause in the constitution, coupled with weak civil society organisations addressing the land question pose major obstacles to the achievement of even the limited objective of the land reform programme in South Africa. This argument will take into account the context within which land reform is taking place in South Africa.

This paper is not about what blacks are going to do with their land once it has been returned to them, or claim it back. This is an important question but needs to be addressed separately and not be confused with the need to address historical injustices.

## **Land Question and land reform in South Africa**

### ***The historical context up to the advent of democracy in 1994***

Land reform in South Africa arises out of the specific historical context of South Africa. I don't have to go into the details of this history, given the amount of literature on the topic. Mine is simply to highlight the key issues that are important in understanding current debates. Starting from the seventeenth century, white settlers in South Africa, through a complex process of colonialism and land dispossession, ended up legally appropriating more than 90 per cent of the land surface, a process that was formalized with the passing of the notorious Natives' Land Act of 1913. This Act confined the indigenous people to reserves in the remaining marginal portions of land. Despite increasing the size of land for African occupation in terms of the Land Laws of 1936, there was chronic shortage of land in these Reserves. As a result, the indigenous people were gradually converted from once successful farmers prior to the discovery of minerals, particularly gold in the 1860s, to poorly paid wage labourers (see Mafeje 1988 and Bundy 1988). Compared to other countries on the Continent, the extent of land plunder in South Africa was extraordinary.

Although the liberation struggle in South Africa was not overtly fought around the land question, as was the case in Zimbabwe and Mozambique for example, there was always the expectation that unravelling centuries of land dispossession and oppression would be among the priorities of a democratic South Africa. Indeed, the ANC's Freedom Charter, drafted in the 1950s when decolonization in Africa was on the agenda, had promised that "(t)he land shall be shared among those who work it" and will be "re-divided among those who work it, to banish famine and land hunger". The Freedom Charter was formulated in a period when decolonization in Africa was high on the agenda. Yet, the reality in South Africa was that at the time, the apartheid government was consolidating its rule and their notion of decolonization was

retribalisation in the form of the Bantustan strategy. Resistance to apartheid laws and practices, including the Bantustan strategy led to a vicious clampdown on political opposition, leading to the banning of political organizations such as the ANC and PAC.

However, following a brief period of political lull in the late 1960s and early 1970s, resistance against apartheid re-emerged. Commentators often trace this re-awakening to the strikes by African workers in Durban in the early 1970s. These strikes spread throughout the country. A few years thereafter, the students' uprisings in Soweto in 1976 fuelled political and economic opposition to apartheid. As early as the early 1980s, some commentators were concluding that South Africa was in a state of "organic crisis" (Saul and Gelb 1981). There was general agreement, even within the ruling class, that the apartheid experiment had failed. By the late 1980s, there were clear signs that a negotiated settlement was on the cards. Already in 1986, big business argued strongly in favour of negotiations with the ANC. Their argument was the ANC was not necessarily a communist organisation and that although 'years of apartheid have caused many blacks to reject the economic as well as the political system', South Africans should not 'dare ... allow the baby of free enterprise to be thrown out with the bathwater of apartheid'.<sup>1</sup> Trips to the headquarters of the ANC in Lusaka became a common feature of South African politics in the late 1980s. On their part, the National Party embarked on talks at the highest level with Nelson Mandela, at the time a political prisoner (see Sparks 1994).

It is these processes that ultimately led to the release of political prisoners and legalising political organisations. This paved the way for the political negotiations talks of the early 1990s and the first democratic elections in 1994. But it is important to bear in mind is that while it is possible to argue that the apartheid regime was under extreme pressure, particularly in the critical period of "ungovernability and insurrection" in the mid-1980s, equally valid is the fact that the opposition forces were not strong enough to overthrow the apartheid machinery. What this meant was that none of the main parties involved in the political negotiation process, in particular the National Party and the ANC had a clear advantage, something that suggested that the negotiation process would involve tough bargaining and, as will become clear, possibilities of compromises.

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<sup>1</sup> This was often quoted in the 1980s, and the remarks, which appeared in the *Financial Times*, London, 10 June, 1986, were by Zach de Beer, the Chief Executive of Anglo-American.

A question that forces itself on us is how the land question was debated in the period up to the advent of South Africa's democracy. As was the case during the liberation struggle, the land question did not feature prominently in the debates of the 1980s about how a future democratic South Africa would look like. But there were interesting and important discussions on this issue. These discussions arose in the context of discussing a Bill of Rights for a future South Africa. It is striking to note that two South African judges, and this is during the apartheid era, took a progressive stance on the question of property rights. They reasoned that a lasting resolution of the South African problem would be threatened if existing property rights were protected. For example, Judge Leon, a fairly conservative judge who sentenced an ANC guerrilla, Andrew Masondo to death in 1985, warned, in the same year he sentenced Masondo, that a constitutional protection of property rights could cause serious problems for the acceptance of the bill of rights (Chaskalson 1993:73). Judge Didcott, one of the more progressive judges during the apartheid period expressed similar sentiments in 1988:

What a Bill of Rights cannot afford to do here ... is to protect private property with such zeal that it entrenches privilege. A major problem which any future South African government is bound to face will be the problem of poverty, of its alleviation and of the need for the country's wealth to be shared more equitably ...  
Should a bill of rights obstruct the government of the day when that direction is taken, should it make the urgent task of social or economic reform impossible or difficult to undertake, we shall have on our hands a crisis of the first order, endangering the bill of rights as a whole and the survival of constitutional government itself (quoted in Chaskalson 1993:73-4)

The two judges seem to have perfectly understood that transformation in terms of property rights and redressing the imbalances caused by colonialism and apartheid were not likely to be possible if existing property rights were recognised and entrenched. It is not clear, though, what alternative measures they had in mind.

However, the issue of property rights appears to have been overtaken by other concerns when the negotiation process started in 1990. When it was eventually discussed, there was a lot of controversy around the protection of property rights. The ANC shifted from an initial position which was similar to that taken by Judge Didcott and in line with the promises of the Freedom Charter, to an acceptance of the property clause in the Interim Constitution of 1993 and later the

Final Constitution of 1996.<sup>2</sup> The relevant section (28) in the Interim Constitution reads as follows:

1. Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.
2. No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.
3. Where any rights in property are expropriated pursuant to a law of referred to in subsection (2), such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investment in it by those affected and the interests of those affected.

It is widely accepted that section 28 represented a compromise between the ANC and National Party positions. There is a fundamental tension that goes through this section arising out of a constitutional protection of existing property rights while at the same time showing a commitment to expropriate land “for public purpose”. Sub-section 1 clearly protects existing property rights and those who have the resources to “acquire” and therefore buy property, while sub-section 3 opens a loophole for the expropriation of land with compensation.

Chaskalson’s interpretation of these sub-clauses is interesting and, with hindsight, optimistic. According to him, section 28(2) read with section 28(3) ‘set up a distinction between *deprivation* of rights in property and *expropriation* of rights in property. The former was to be performed “in accordance with law” while for expropriation, there were two added requirements: ‘the expropriation had to be performed pursuant to a public purpose and had to be followed by the payment of compensation’. The ANC, according to Chaskalson understood the inclusion of section 28(2) to ‘mean that in the absence of an expropriation, compensation need not be paid to a party deprived of property rights by state action’ (1995: 236). Apart from being optimistic, I find the interpretation that property could be confiscated without compensation in the circumstances of the political negotiation process in the early 1990s surprising. This matter needs to be pursued and deserves more research.

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<sup>2</sup> For a detailed treatment of the property clause see Chaskalson 1993; 1994; 1995 and Ntsebeza 2007.

Chaskalson's optimism seems to have been based on his understanding and interpretation of the compromise reached in the negotiations. Although agreeing that the wording of section 28 'is not always clear', he imagined that the courts 'would do well to adopt a purposive approach' in interpreting this section, bearing 'in mind the compromise which the section' sought to achieve. Drawing from comparative legal history, Chaskalson concluded that if courts were 'overzealous in their protection of property rights ... the potential for constitutional conflict between court and state will be substantial' (1994: 139).

As with the interim constitution, the property clause was entrenched in the final constitution. The final version of the constitution essentially reinforced and refined what was already contained in the interim constitution: protection of existing property rights of landowners, the vast majority of whom are white, while at the same time making a commitment to redistributing land to the dispossessed majority. The main difference seems to be that while the interim constitution allowed for expropriation only for public purposes, the final constitution expanded this to include public interest. The issue of expropriating land only for public purpose raises the question of how to classify land expropriated for land reform purposes. It can be argued, though, that land expropriated for land reform purposes is not for public purposes given that it is transferred to the historically dispossessed. On this point, Chaskalson correctly argued that given that 'any substantial land reform programme is likely to depend on expropriation ... land reform could be rendered 'constitutionally impossible' (1994: 136-7). By expanding expropriation to public interest, the possibility of expropriating land for land redistribution purposes existed.

In general, in some circles, an atmosphere thick with optimism prevails despite the compromises and deals of the political negotiation process of the early to mid-1990s. There seems to have been a belief that the gains made in the 1980s would not be lost. A typical gain that had been made with regard to the land question, for example, was the fact that some white farmers, including those in the South African Agricultural Union (SAAU) had come to accept that negotiations with black land-claimants could mean that the latter would gain ownership of a portion of the farmers land as part of a wider process of redress (Chaskalson 1993:73). In short, some white farmers had, by the early 1990s, come to accept that for the sake of stability, they would have to part with portions of "their" land for transfer to the historically dispossessed.

From my personal recollection working on land occupations in the Queenstown area of the Eastern Cape in the mid-1990s, the question of buying and selling land was hardly discussed: a significant amount of land had been grabbed and occupied by land hungry black South Africans (Wotshela 2001). There was, behind these land occupations the conviction by the historically dispossessed and their allies that existing white property rights were illegitimate. On the one hand, some white farmers were beginning to accept that they would have to share land with their black South Africans.

### **Land reform in a democratic South Africa: a brief survey**

As pointed out from the outset, except for hardboiled party loyalists, there is wide acceptance today that the pace of land reform in South Africa is painfully slow. I do not propose to develop a full critique of the land reform programme in this paper.<sup>3</sup> Mine is a reminder of the key features of the South African land reform programme. The programme is based on market principles in terms of which the ANC-led government made an undertaking to buy land from white commercial farmers to facilitate the redistribution of land. In 1997, the Department of Land Affairs adopted a White Paper on Land Policy which, amongst others, endorses the principle of ‘willing seller, willing buyer’. The initial target proposed by the World Bank was that 30 per cent of agricultural land was to be transferred from white farmers to blacks with the first five years of South Africa’s democracy.

By 1999, the end of the first five years, barely one per cent of land had been transferred from white to black hands. This was a far cry from the 1994 target of transferring 30 per cent of agricultural land. Following this dismal failure, the Minister of Land Affairs changed the period and targeted 2014 as the year the 30 per cent target would be met. At the end of the first 10 years of democracy in South Africa in 1994, a mere three per cent of the land had been transferred to black hands. In July 2005, the Department of Land Affairs organised in Johannesburg an historic land summit involving various interest groups including representatives from civil society organisations and government. The land summit was built around the theme:

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<sup>3</sup> For a comprehensive attempt to assess the land reform programme in South Africa, see Ntsebeza and Hall (eds.) 2007.

“A Partnership to Fast Track Land Reform: A New Trajectory, Forward to 2014”, the year to meet the 30 per cent target. Far reaching resolutions were taken, and later adopted by the summit. For example, on strategic direction, there was overwhelming support that:

- the state should be proactive and be the driving force behind land redistribution;
- the willing seller, willing buyer principle be rejected;
- the state to have right of first refusal on all land sales
- land reform should benefit the poor, particularly women, farm workers and youth and that
- land should be expropriated

Almost two years after the land summit (and just over 13 years after the introduction of democracy in South Africa) the redistribution of land is still dismal, around 4 per cent of agricultural land has been transferred from white hands. The question surely is why?

### **Obstacles to land redistribution in South Africa**

#### ***Debate around current policies with specific reference to the property clause***

Various reasons have been offered in attempts to explain the slow delivery in land reform. As indicated in the introduction, there are those who argue that the fundamentals in terms of policy are in place. These commentators argue that what is missing is commitment from the government to ensure that the policies are implemented. This allegation is often couched in terms of a lack of political will on the part of the ANC-led government and capacity on the part of government officials. Before the land summit which was organised by the Department of Land Affairs in July 2005 referred to above, government officials were the most fervent supporters of the claim that the fundamental were in place and that what was needed was the implementation of policy. The clearest public expression of this position was in form of testimonies by Glen Thomas and Manie Schoeman, who were the government representatives at

a Land Tribunal held by an NGO called Trust for Community Outreach and Education (TCOE)<sup>4</sup> in Port Elizabeth in December 2003. Both claimed that they did not have any problems with policy, including the notorious willing-seller-willing-buyer condition. The issue, according to Thomas was ‘whether government has sufficient resources to buy land when there is a willing seller at a price at which the willing seller wants to sell the land’. He was adamant that the ‘land market is there. There’s no scarcity of land that could be bought, but the question is at what cost, at what price? That’s the point’.

When the Chairperson of the Land Tribunal wanted to know how Thomas would respond to concerns raised by witnesses that the key obstacle was policy, that, in the words of the Chairperson, ‘it’s not so much the scarcity of resources, but the commitment to the principle of willing-buyer-willing-seller’, Thomas was ambivalent: ‘what we can’t do is to confiscate, because by confiscating we shall be depriving certain people of their rights as reflected in the Constitution’. He conceded that ‘there is a perception – justifiably – that the willing buyer/willing seller approach is problematic’. However, having said this, he was quick to point out that ‘government is also constrained’ and it ‘cannot be government itself that starts to violate the Constitution’

If Thomas was at times ambivalent in his position regarding the adequacy of existing policy, his fellow government representative, Manie Schoeman, who defected from the National Party to the ANC, was forthright in his unwavering support for government policy. Unlike Thomas, he was less inclined to opening discussions on the possibility of making some constitutional amendments, including revisiting the property clause. Schoeman preferred to restrict himself to the present policy of the “ruling party” which endorses the property clause “as it is”. Although it could change, he thought that ‘the guarantee of ownership of property is also fundamental to a democracy’. However, although he thought that the 1913 cut-off date was ‘done in much wisdom in the interest of reconciliation’, he conceded that ‘it doesn’t take away the obligation from the whites in this country to acknowledge that they acquired property or their forefathers did in an irregular basis and that we don’t have an obligation to rectify that process’. Mr. Schoeman did not elaborate on what he meant by rectifying the process, given that he stood by his position that existing policies were perfect.

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<sup>4</sup> More about this NGO in the next section on civil society organisations

A more nuanced and coherent version of the above argument has recently been made by Ruth Hall (2004).<sup>5</sup> She does not query the fact that Section 25(1) protects existing property rights (2004:5). Her point is that although the land reform policy is based on a 'willing seller, willing buyer' condition, the state can expropriate land. She argues that a far-reaching land reform is possible within the existing constitutional framework. Hall contends that the protection of existing property rights should be balanced with 'an injunction towards transformation'. According to her:

While protecting rights, the constitution also explicitly empowers the state to expropriate property and specifies that property may be expropriated in the public interest, including "the nation's commitment to land reform (2004:6).

Expropriation as conceived in post-1994 South Africa, Hall reminds us, is not limited to instances of "public purposes" such as the building of public infrastructure, but can now apply to the transfer of property from one private owner to another. In other words, Hall's overall argument is that expropriation powers 'have been largely unused', only used in two restitution cases so far. This makes her conclude that there is 'room for manoeuvre' and that the call for legal and constitutional amendment 'seems misplaced. Constitutional amendment is not the immediate challenge since the constraint is a political rather than legal one' (2004:7).

Hall seems to make a distinction between the property clause in the Constitution and the willing-seller-willing-buyer condition in land reform policy. While she does not have any problem with the property clause, given her argument that although existing property is protected, there is also the provision for expropriation, she seems worried that expropriation powers are weakened by the government's adoption of the World Bank imposed 'willing buyer, willing seller' policy as a guide to land reform.

Radical analysts, on the other hand, contest the adequacy of current policies and argue for policies that will facilitate a radical land redistribution programme in South Africa which goes

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<sup>5</sup> A similar position was advanced by Edward Lahiff, a colleague of Hall in the Programme for Land and Agrarian Studies (PLAAS), University of the Western Cape in his comments on an earlier version of this chapter, presented at a conference that was organised by the Harold Wolpe Trust in Cape Town, March 2004. But I haven't seen any written expression and expansion of Lahiff's position.

beyond the meager 30 per cent target outlined above. These critics consider the entrenchment of the property clause in the Constitution, as well as the endorsement in policy of the willing seller, willing buyer principle as major obstacles to implementing even the limited land redistribution programme of government. Hendricks and Ntsebeza (2000) and Hendricks (2004) have argued that the provisions of section 25 in the Constitution are contradictory in the sense that on the one hand the Constitution protects existing property rights, while at the same time making a commitment to redistributing land to the dispossessed majority. The two objectives, the argument goes, cannot be achieved at the same time simply because the bulk of land outside the former Bantustans is under private ownership and consequently safeguarded by the Constitution. In this regard, a declaration that land will be made available to blacks is rendered void for the simple reason that whites privately own most land. As commentators like Mafeje (2002) would put it, the declaration eschews the land question and in so doing confirms the pre-1994 situation. This tension was also captured by the acting chairperson of the Land Tribunal referred to above, Advocate Dumisa Ntsebeza. In his closing remarks, he averred:

It does appear that there may well be a case here in the Constitution, which cries for an argument as to whether we don't have within the same Constitution competing rights. And if we have those competing rights the question will arise, which of those rights must take precedence. That will probably be one of the remedies that the claimants in this case want to look at.

The property clause in the constitution has prompted Hendricks (2004) to ask the question: Does the South African Constitution justify colonial land theft?

This is, in many ways, the argument that Hall was challenging. She and her colleague, Lahiff have a point, though. Hendricks and Ntsebeza never really address the vital issue raised by Hall and her colleague regarding expropriation. I will in what follows, respond to this challenge.

An important issue to remember here is that expropriation, as Thomas reminded those attending the Land Tribunal 'has to be with compensation because without it, we are talking about confiscation'. This then raises the question of how compensation is determined. Sub-section 3 of section 25 of the constitution is supposed to guide the determination of compensation. However, it is widely accepted that this sub-section is extremely vague. It

merely states that ‘the amount of compensation and the time and manner of payment must be just and equitable’. But what precisely counts as a ‘just and equitable’ dispensation is not clearly spelt out, except that the subsection goes on to state that compensation should reflect ‘an equitable balance between the public interest and the interests of those affected’. In this respect, regard would be accorded to ‘all relevant circumstances’. The pertinent ones for purposes of this chapter include the history of the acquisition and use of the property; the market value of the property; and the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property.

In recognition of the vagueness of some of these provisions, a so-called ‘Geldenhuis formula’ is used to determine compensation. Justice Geldenhuis is a Land Claims Court judge who worked out a particular formula for the determination of compensation in cases involving expropriation in restitution cases. It is argued here that this formula could be used as a guide even in case of land redistribution. In essence, the formula takes into account two of the circumstances mentioned in sub-section 3 of section 25 of the Constitution: the market value of the property and the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property. In a nutshell, the amount of compensation is the market value of the property minus the present value of past subsidies.

The question that confronts us is whether a consideration of the expropriation measure and the clarity that the Geldenhuis formula has brought undermines the argument, which I support, that the property clause is a major obstacle in fundamental land reform in South Africa. I contend that the expropriation clause does not affect my core conclusion about the property clause. In the first instance, government has itself shown great reluctance to invoke the expropriation clause. Thomas conceded in his testimony that although the government has expropriated land for land reform purposes, this is not the norm. In his response to a question from the President of the PAC on the 2005 State of the Nation address, President Mbeki has also shown great reluctance in using expropriation as a mechanism to redistribute land. In recent times, particularly after the land summit, the Department of Land Affairs has given notice to expropriate a number of white claimed farms in cases involving restitution. However, it remains to be seen whether government will pursue these cases in the event, as is most likely, the farmers take up the matter to court.

Secondly, even if the government were to pursue the issue of expropriation, there is still the question of compensation and how the price is determined. In this regard, the Geldenhuys formula could be a guide. We have seen that according to the judge, the price of land should be determined by the market. Although the Geldenhuys formula takes into account the critical issue of subsidies, which should be deducted from the market price, the fact that compensation is based on the market price almost makes it impossible for the government to budget for land reform for the simple reason that the role of the state in determining the price is very limited, if at all. Thomas in his testimony conceded that the fact that land owners were inclined to inflate their prices was a potential problem, something that made Advocate Dumisa Ntsebeza, the chairperson of the Land Tribunal in his concluding remarks to observe: ‘Because if one is going to use the market to establish the price of land in restitution cases, it means that government can also not afford to buy land and restore it to the claimants. It does appear that there is inadequate legislation to deal with questions of land restitution’. Hall also concedes that in practice, white farmers ‘determine when, where and at what price land will be made available’ (2004:6).

A point worth making in this regard is how the Geldenhuys formula has severely called to question what I earlier called Chaskalson’s optimism regarding the compensation amount. We will recall that Chaskalson had argued that the amount of compensation in cases of expropriation could be determined without necessarily taking the market value into account. The judgement by Geldenhuys has created a precedent that pours cold water over Chaskalson’s optimistic position.

It is intriguing that the history of how colonialists acquired land in the first instance is not receiving prominence in the determination of compensation. In so far as reference is made to history, the suggestion is that this refers to the history of land acquisition by the affected land owner. Yet, there is the history of colonial conquest and land dispossession that lies at the heart of the land question in South Africa. It is hard to imagine how any process of land redistribution which downplays this history can hope to gain legitimacy in the eyes of those who were robbed of their land in particular. Closely linked to this is that the naked exploitation of black labour which was central to the success of white commercial farming in South Africa is interestingly not considered to be one of the crucial factors that must to be taken into account when the amount of compensation is calculated.

Lastly, some commentators and activists have attributed the seeming reluctance to expropriate land to lack of political will on the part of the government. We have seen that according to Hall, the ‘immediate challenge’ is not a legal but a political one. It is not clear what Hall means by the issue not being ‘legal’. I would argue that the issue of compensation, even if the Geldenhuys formula is used can end up in law courts if white farmers decide to contest the compensation amount. Nothing stops them from doing that. There are implications if the matter goes to court. First, legal processes can be frustratingly protracted. For example, if the owner does not accept a compensation offer, s/he has, in terms of section 14(1) of the Expropriation Act, up to eight months to make an application to a court. The process can drag on after this. In addition, legal processes are very expensive. Both these factors are discouraging especially and even though a legal contestation would involve often rich farmers and the state, it is poor landless blacks who end up suffering either through delays and/or in instances where court decisions favour white farmers. It is also worth bearing in mind that in a court case involving the state, it is in the end the taxpayers money that is involved. I argue that the entrenchment of the property clause in the constitution, in particular section 25 (1), puts farmers in a very strong position in situations where they contest expropriation and the determination of price.

While the issue of the property clause is critical in discussions about obstacles to a successful land redistribution programme, it is, as indicated in the introduction, not a sufficient condition. Equally important is the question of agency to which I now turn to.

### ***Civil society organization on the land question***

Compared with the period up to the late 1950s and early 1960s, as well as the re-emergence of urban based civil society movements including trade unions and struggles since the early 1970s, an active and organized movement focusing on the land question is very weak. This may sound ironic considering the unparalleled nature of land plunder as indicated at the beginning of this paper. Yet, I argue that an organized campaign around the land issues, with clear objectives and strategy and involving those who are directly affected is a *sine qua non* for successful land redistribution. Such a structure becomes all the more necessary given the organized nature of commercial farmers and the alliances they enjoy with other formations of capital in South Africa.

In this section, I focus on land and agrarian movements in South Africa and how they have dealt with the land question. As I conclude the paper, I consider why land and agrarian movements are weak in South Africa. I base my argument on two inter-linked issues. In the first place, there is a tendency to define the land question as a rural phenomenon with a focus on almost exclusively agriculture. I argue that this is a very narrow and limited way of thinking about the land question. Not only does it exclude urban struggles around the land question, including housing and the possibility of urban agriculture, mining industry runs the risk of being removed from the radar. This takes us to the second issue which has to do with the nature of land and agrarian movements and questions of strategy. Defining the land question as rural and concerned with agriculture shapes the nature and strategy of land and agrarian movements in particular ways which pose challenges to the possibility of striking alliances with urban based movements which are also involved in land struggles not necessarily for agricultural land, as well as those involved in struggles in the mining industry. With the above in mind, let us turn to land and agrarian movements in South Africa.

It must be noted in the first place that the organised voice from below in the land sector at the advent of democracy in 1994 was a group of land based NGOs that established a network referred to as the National Land Committee (NLC). These organisations had emerged during the apartheid period, mainly in the 1980s, as a response to forced removal of millions of black Africans from white designated areas. Thus, land and agrarian movements were led by NGOs who acted for and stood on behalf of land seeking black victims of segregation and apartheid in South Africa. The composition of land movements since the 1980s differed tremendously from the rural land lobby of the 1940s, 1950s and early 1960s. These movements were led by those directly affected by the policies of those times. In the majority of cases, there was no direct involvement of political organisations and NGOs hardly existed (Matoti and Ntsebeza 2005). The best known of these movements is the one that organised the *Mpondo* revolt of the early 1960s that Govan Mbeki (1984) writes about. But there were others, for example in the former Xhalinga district in Western Thembuland (Ntsebeza 2006). However, these movements were ruthlessly suppressed in the early 1960s as part of the mopping up campaign of the National Party in the early 1960s. While the fact that these struggles were led by the rural residents themselves with hardly any involvement by political organisations meant that the struggles were

led and controlled by those affected, the downside was that the struggles became isolated and thus were relatively easily suppressed.

When resistance re-emerged after the clampdown of the early 1960s, the focus was on urban areas, particularly around trade unions. The focus on urban struggles intensified after the students uprising of the 1976 and the establishment of the United Democratic Front (UDF) in 1983. It is in this context that NGOs, which were urban based, emerged with some, affiliates of the NLC, focusing on forced removals as indicated above. This form of organisation was different earlier forms as NGOs took the lead taking up issues on behalf of rural residents. In the 1980s, most of the affiliates of the NLC cast their lot with the broad liberation movement under the auspices of the UDF. In the early 1990s, during the political negotiations, the NLC became part of the land lobby identifying with the ANC. Although some affiliates were not happy with the adoption of the property clause in the constitution, they nonetheless remained loyal to the ANC.

Despite the fact that the ANC went on to adopt a market-led approach to land reform, when it came to power, there seems to have been a sense amongst many that the ANC government was seriously committed to redressing historical injustices and that this would somehow be done within the limits of neo-liberal capitalism. On its part, the government had in 1994 followed a World Bank recommendation that 30 per cent of white claimed agricultural land be transferred during the first five years of democracy. As a result, some members resigned from their organisations and joined the Department of Land Affairs as government officials. Those remaining in the organisations took it upon themselves to support the DLA. The presumption, it seems, was that “this is our government” and that the room to manoeuvre was quite wide.

The embarrassing and frustrating pace of land delivery, however, gave rise to discontent which fed into the formation of the Landless People’s Movement (LPM) in 2001. The NLC played a crucial role in the establishment of the LPM. Events in Zimbabwe also helped to propel the formation of the LPM, as did connections with the Brazilian Landless Workers’ Movement (MST) and Via Campesina.

The growth a discontented landless people, supported by the NLC was rather short-lived. By the end of 2003, the NLC and LPM were in disarray. Long-standing disputes within the NLC over support for the LPM intensified in the period following the World Summit on Sustainable

Development in 2002. By 2004, the NLC formally disbanded as a network, although its affiliates continue to exist, with some establishing an informal network. After the demise of the NLC, there came into existence, shortly before the land summit, an alliance of various movements under the acronym ALARM (Alliance of Land and Agrarian Reform Movements). Although committing itself to “rural transformation rooted in a rapid and fundamental transfer of land to the poor and the promotion of security for those living and working on the land”, it is early days to say what the future holds for this Alliance.

### **Concluding remarks**

As I draw this paper to a close, it is important to address the hard question as to why the state has not, does not and seems very reluctant to act in a manner that may antagonise white commercial farmers. A standard response from some analysts, as we have seen in the case of Hall above, suggests that the state does not have the political will to use its expropriation powers. Others, such as Marais argue that part of the explanation is that the left within the Tripartite-Alliance was defeated in the mid-1990s when there was a shift from the RDP to GEAR. The important question, though, is why the left lost the battle.

A more substantial explanation, I would argue, cannot afford to ignore the global political and economic order that emerged after the collapse of Soviet Communism from the late 1980s and how this affected the balance of forces. The transition to democracy in South Africa in the early 1990s took place at a critical moment. Burawoy (2004) has recently suggested in his Harold Wolpe Memorial Lecture that after collapse of Soviet communism, the ANC was left without a compass. Although not a communist or socialist organisation, the influence of communists in the ANC was palpable. Some of the clauses of the Freedom Charter bear testimony to this. However, at the time of the political negotiation process in the early 1990s, it must have been extremely difficult for the radical provisions of the Freedom Charter to be sustained. The international climate clearly favoured pro-capitalist forces. This could be one explanation for Marais claim. Indeed, given the dominance of neo-liberal capitalism in the 1990s, the question should be asked what a left radical agenda would be under such conditions.

It is common cause that when the ANC launched its election manifesto, the

Reconstruction and Development Programme (RDP) in 1994, there was a fundamental reversal of the Freedom Charter's call for the nationalization of land. Although the RDP had redistributive elements, the document equally committed the ANC, albeit cautiously to a market-led land reform programme. Two years thereafter, in 1996, an ANC-led government formally embraced conservative neo-liberal economic policies in the form of GEAR (Growth, Employment and Redistribution). With regard to the land reform programme and its implementation, not only did government commit itself to a market-led programme, land reform policy in South Africa was to be based on a willing seller, willing buyer principle. This was despite the fact that this principle had by the mid-1990s proved to be a failure in, for example, neighbouring Zimbabwe. The justification for the shift is often couched along similar lines as elsewhere where these turnabouts have been made: "there is no alternative" (TINA) to global capitalism. Indeed, the shift to GEAR and the endorsement of the willing seller, willing buyer condition must have dealt a serious blow to the "land lobby" in the negotiation process which had hoped for at least a "mixed economy" and radical reform in a democratic South Africa.

Writing at the height of the triumph of neo-liberalism, Ellen Wood (1995) reminded us that under capitalism, citizenship and democracy are limited in scope. Her argument is that 'representative (liberal) democracy' distanced itself from the ancient and literal meaning of the term (democracy), resulting in a shift in focus 'away from the active exercise of popular power to the passive enjoyment of constitutional and procedural safeguards and rights, and away from the collective power of subordinate classes to the privacy and isolation of the individual citizen'. Hence the domination of the liberal principles: 'limited' government, civil liberties, toleration, the protection of a sphere of privacy against intrusion by the state, together with an emphasis on individuality, diversity and pluralism (Wood 1995:226-7). Thus, by separating 'the economic and the political', or the transfer of certain 'political' powers to the 'economy' and 'civic society', capitalism has, according to Wood, created a seemingly anomalous situation where socio-economic inequality and exploitation coexist with civic freedom and equality. In her words:

The separation of civic status and class position in capitalist societies thus has two sides: on the one hand, the right of citizenship is not determined by socio-economic position – and in this sense, capitalism can coexist with formal democracy – on the other hand, civic

equality does not directly affect class inequality, and formal democracy leaves class exploitation fundamentally intact (Wood 1995:201).

It is in this sense, she emphasises, that ‘political equality in capitalist democracy not only coexists with socio-economic inequality but leaves it fundamentally intact’ (Wood 1995:213).

The implication of Wood’s argument for South Africa is that by adopting GEAR, in particular, South Africa was putting itself in a position where political equality in the form of periodic elections was unlikely to translate into economic equality. It should be noted, though, that Wood’s critique is directed against the system of capitalism, neo-liberal or otherwise. On her part, Gill Hart has lamented: “GEAR sits uneasily astride the emancipatory promises of the liberation struggle, as well as the material hopes, aspirations, and rights of the large majority of South Africans” (2002:7).

There seems little doubt that the ANC-led government is under tremendous pressure from both local and international capital to pursue a neo-liberal capitalist agenda in South Africa. For example, the land summit in July 2005, as shown in the introductory chapter, passed radical resolutions regarding land reform in South Africa. But it will be difficult for the Department of Land Affairs to deal with the resolutions of the Land Summit. While the overwhelming majority of participants agreed that extraordinary measures be taken to accelerate land delivery, including scrapping the willing seller, willing buyer principle, a tiny minority of white commercial farming delegates belonging to their association, AGRISA, stood in opposition to these resolutions. They threatened that if there was interference with the market, there would be consequences far beyond the imagination of those at the summit. They pointed to Zimbabwe as an example, giving a clear message that should the South African government defy the principles of neo-liberal capitalism, South Africans will find themselves in a position where this world boycotts them, as is the case in Zimbabwe. In a sense, white commercial farmers in South Africa, despite being a minority, are aware that they have got an international capitalist system which is behind them.

Finally, whatever pressures the international situation dominated by a neo-liberal agenda exerts on the South African government, the overall context of land dispossession and land reform in this country should not be forgotten. The claims that the dispossessed and poor South Africans are laying are legitimate. At the same time, there is no doubt that the market-led

approach to land reform, including the including the protection of property rights in the constitution and the willing buyer, willing seller approach to land reform will not unravel years of colonial and apartheid dispossession. There is a need to open up debate and discussion on these matters. The starting point in that debate should be whether a comprehensive land redistribution programme in South Africa can take place ignoring colonial conquest, land dispossession and the fact that commercial farming triumphed as a result of the naked exploitation of black labour. Above all, the debate would have to engage with the entrenchment of the property clause in the constitution. For these debates to be meaningful, it is of utmost importance that those who suffered these injustices, the indigenous people of South Africa play a leading role. Those who sympathise with them should play a supportive rather than leading role.

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