

IHC Special Report

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Number R-05-2018

29 May 2018

On the intention of the state to expropriate land in South Africa without compensation



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The Institute for History and Culture (IHC) is an independent research organisation, involved in the publication of position papers, special reviews of political events, surveys, historical investigations, and studies of contemporary cultural issues. The Institute is based in Pretoria, South Africa, and is funded by private donors.

Introduction

1. *Whereas* the government of the Republic of South Africa has, in several announcements, declared their intention to expropriate land without compensation; and
2. *Whereas* the government has asked the **Committee for the Review of the Constitution** to advise the government on the said matter, with the strong suggestion that the constitution be changed to enable the government to expropriate land held in private ownership *without compensation*; and
3. *Whereas* extremely limited time has been allowed for public reaction to submit arguments on this topic,

we wish to submit this report for urgent official consideration during the deliberations regarding Chapter 2, Section 25 of the **Constitution of the Republic of South Africa**.

The report is submitted on behalf of the **Institute for History and Culture (IHC)**, a private research organisation based in Pretoria, South Africa.

The submission

4. *Recognizing* the economic needs of all the citizens of South Africa within the context of a developing country, and *recognizing* the need for economic and financial stability in order to promote the orderly development of policies and infrastructure for development;
5. *Taking note* of the fact that South Africa has developed very rapidly over the past century under a system of free enterprise, and under a diversified system of private ownership, allowing private entrepreneurship and private initiative for widespread business development;
6. *Taking note* of the fact that the farmers of South Africa greatly contributed to the development referred to above by providing jobs, basic housing and opportunities to upgrade the skills of farm workers;
7. *Taking note* of the fact that white farmers have been targeted in hate campaigns and vilification over the past twenty to thirty years;
8. *Taking note* of the intention of revolutionary movements to occupy land unlawfully, and ongoing efforts to this end;
9. *Remembering* the catastrophic consequences of land occupation, land expropriation and land redistribution in the case of Zimbabwe;
10. *Taking note with great concern* of the ongoing attacks on farmers in South Africa leading to the torture, mutilation and death of thousands over the past 28 years;
11. *Remaining aware* of the failure of many land claims in the courts of South Africa, and the economic failure of many of the farms transferred in terms of land restitution;
12. *Taking note* of the fact that the present government has failed to transfer land ownership by way of property deeds in many cases of land restitution;

13. *Noting furthermore* the occurrences of serious corruption during the establishment of black owned farm enterprises;

We therefore submit our considered opinion and views as follows:

14. We *remain convinced* that the issues of land and private ownership cannot be judged in isolation from other fundamental considerations regarding economic development and material welfare — factors such as population growth, population diversity, the historical background of land ownership, systems of tribal government, the availability of management skills, existing expertise in financial management, levels of education and training, technical requirements, the environment, and the cultural landscape of South Africa. We live in a land with racial and cultural contours that cannot be denied or ignored without grave risks to the welfare of all.
15. At present a distorted image of South African history is touted as the final truth on which economic decisions should be based. The core of this distortion concerns the allegation that “the land was stolen” from black people. This misleading, unfounded and malicious statement cannot be supported by the historical record of land ownership in South Africa. It is a dishonest strategy to promote a purely ideological agenda.
16. The distortion of our history is further exemplified by the popular argument about the percentage land owned by a certain race when compared to the percentage of land owned by a different race — thereby casting the whole debate regarding historical rights or historical ownership in a racial mould. It is an attempt to create a false motivation for a socialist agenda, whereby the state will be entitled to “redistribute land”. This in itself represents a transgression of the principles underwritten by the Constitution. [Reference: Section 25, articles 1 and 2 of the Constitution]
17. Nowhere in the world is ownership of land or the right to possess land based on population statistics. Efforts in South Africa to promote this idea is an indication of the immaturity of political society in general and it is a testimony to the malice contained in certain threats to the *de facto* owners of land. This is true regarding the particular way the white farming community is targeted in South Africa.
18. A misleading game of numbers is bandied about by certain political parties to promote the dispossession of farmers and other owners of land through the agency of the state. This poses an extremely dangerous threat to peace and stability in our country.
19. We are of the opinion that the whole issue of land ownership, the creation of opportunities for black farmers, and the state’s ambition to further empower the ANC-government to expropriate land without compensation by changing the constitution, misses the point entirely. We hold this view based of the following:
 - (a) Farming has become one of the most difficult occupations, and an extremely risky one at that, in South Africa.

- (b) The percentage of the population who possess the skills and knowledge to farm successfully cannot be artificially raised by the transfer of land ownership or the dispossession of experienced white farmers.
- (c) The state has no right to be a judge of who should be farmers and who should be prevented from farming. In a free economy this is decided through the mechanism of profit and loss, and the presence of skilled entrepreneurs. Furthermore, the transfer of farming skills, economic judgment and agricultural knowledge is based on secure property rights and associated financial security. Skills in agriculture cannot be artificially transferred to a large number of people who suddenly gain “access to land”. It is clear that agricultural land does not create wealth on its own; the land is only a natural resource. Many other resources are required, such as knowledge, experience, finance, training, research, equipment, electricity, water and skilled management. Only skilled and experienced farmers are able to farm successfully and supply the quality produce required by the market. Driving experienced farmers from the land (either through the unlawful occupation of land or through dispossession by the state) will not create wealth in South Africa.

20. *We are convinced* that the stated ANC-policy of solving the problem of poverty through land expropriation without compensation or through land redistribution is a false flag operation. Alleviating poverty would require inter alia a rigorous system of price control, and the open support of farmers to deliver affordable products to the market. None of this is happening in South Africa. In other countries the farming sector is regarded as a strategic resource, and governments strive to support food production and stability in every possible way, in many cases through subsidies, the improvement of infrastructure (power, water and logistics) or the lowering of the tax burden. If the motive for land expropriation without compensation was the alleviation of poverty, the state has never shown (in hard figures) just how this might be achieved. There has been no plan published for public comments and scrutiny, showing how land expropriation will alleviate poverty in South Africa. The argument that the expropriation of land will end poverty in South Africa is really nothing more than a political slogan.

It is childish to declare that people should be given land, just because they want land. This is said about black people. There are millions of white people in South Africa who do not own any land at all, and possibly hundreds of thousands who would like to be farmers but who cannot afford it.

21. The ANC-government, who is now asking for more constitutional powers to expropriate land without compensation, has in many cases mismanaged the settlement of land claims over the past twenty years. Research shows that farming operations started among beneficiaries have collapsed in the majority of cases. The present government’s record already shows what South Africa can expect from a programme of blanket expropriation. It opens up a huge opportunity for corruption, political favouritism, and the

misuse of tax payers' money. The ANC policy on land also encourages political factions whose stated aim is to occupy land illegally.

22. Considering what has been said above in paragraph 20, we propose that the real problem the government should engage with is the huge need for **housing, infrastructure and reliable services** rather than the expropriation of **farm land**.

By expropriating productive agricultural land the mass occupation of such areas will be the end result, and it can be expected that informal squatter camps will appear on expropriated land. Such areas will be regarded as “land for the people”, in accordance with promises made by the government. A feeling of unjustified entitlement has already been cultivated through the use of simplistic slogans, as demonstrated by the illegal occupation of land in urban areas.

This is destined to become a major problem in the future. Internal migration to metropolitan areas and the illegal occupation of land is already a serious challenge in many municipal areas. During protest actions the lack of proper housing and the general lack of infrastructure or service delivery is often highlighted. If the ANC-government really cares about poverty, this is where they need to turn their attention to. The same goes for the high rate of unemployment in the country — a problem that has continued for more than two decades. Land expropriation will not solve this crisis.

Historical arguments

23. The general approach of the ANC-government is to establish the myth that land was stolen from the black people on a large scale and should therefore be returned to the original “owners”. To use this as an administrative consideration of any legal or practical value, it will be necessary to trace the history of land ownership in full detail. The present government has failed to publish their interpretation of the statement that “the land was stolen”. They have not justified this claim through proper and detailed investigations carried out by historians.
24. During the 1950's and the 1960's the government of the Union of South Africa has researched the various tribal histories of South Africa with the aim to gain insight in the cultural and political differences among the black nations of this country. This research was published in a comprehensive series of official “blue books”. The land question cannot be addressed without taking research of this kind into consideration. Further research along these lines is contained in many publications, and we mention only some of the recent documents that addressed the issue of land from an historical point of view:

(a) *Omstrede land – Die historiese ontwikkeling van die Suid-Afrikaanse Grondvraagstuk*. Louis Changuion & Bertus Steenkamp, Protea Boekhuis, 2011.

- (b) *The South African Land Issue – Background to the Debate*. Compiled by Werner Weber. Western Printers, September 2015.
- (c) *Land Reform and Livelihoods – Trajectories of change in Northern Limpopo Province, South Africa*. Michael Aliber et al. HSRC Press, 2013.
- (d) *Land Divided, Land Restored – Land Reform for the 21st Century*. Edited by Ben Cousins & Cherryl Walker, Jacana 2015.
- (e) *Land of Sorrow – 20 Years of Farm Attacks in South Africa*. Compiled by Maj Gen Chris van Zyl and dr Dirk Hermann, 2011.

25. We know from the historical record that land was reserved for the Bantu-tribes and black nations of South Africa in the Land Act of 1913 (Act 27 of 1913). In 1936 (Act 18 of 1936) substantial additional land was allocated by the white government to the trust/homeland areas for the various black nations of South Africa. These acts (and others) provided a basis for the future development of black homelands in their traditional areas. It specifically provided for the recognition and legal protection of tribal trust land. No white person would be allowed to buy such land.

On page 431 of the publication by Louis Changuion (mentioned above) a table shows the land bought by the South African Government between 1966 and 1976 and registered as additional trust areas up to 1976. In all of the ten Bantu homelands during this period the total land was **increased**, and indeed as follows:

Bophuthatswana: Increased from 3 378 900 to 3 944 400 hectares.

Ciskei: Increased from 488 400 to 813 300 hectares.

Gazankulu: Increased from 648 400 to 748 500 hectares.

KwaZulu: Increased from 2 674 000 to 3 166 700 hectares.

Lebowa: Increased from 1 999 700 to 2 424 400 hectares.

Qwaqwa: Increased from 50 020 to 64 360 hectares.

South-Ndebele: Increased from 148 000 to 199 100 hectares.

Swazi: Increased from 139 200 to 310 900 hectares.

Transkei: Increased from 4 257 100 to 4 395 600 hectares.

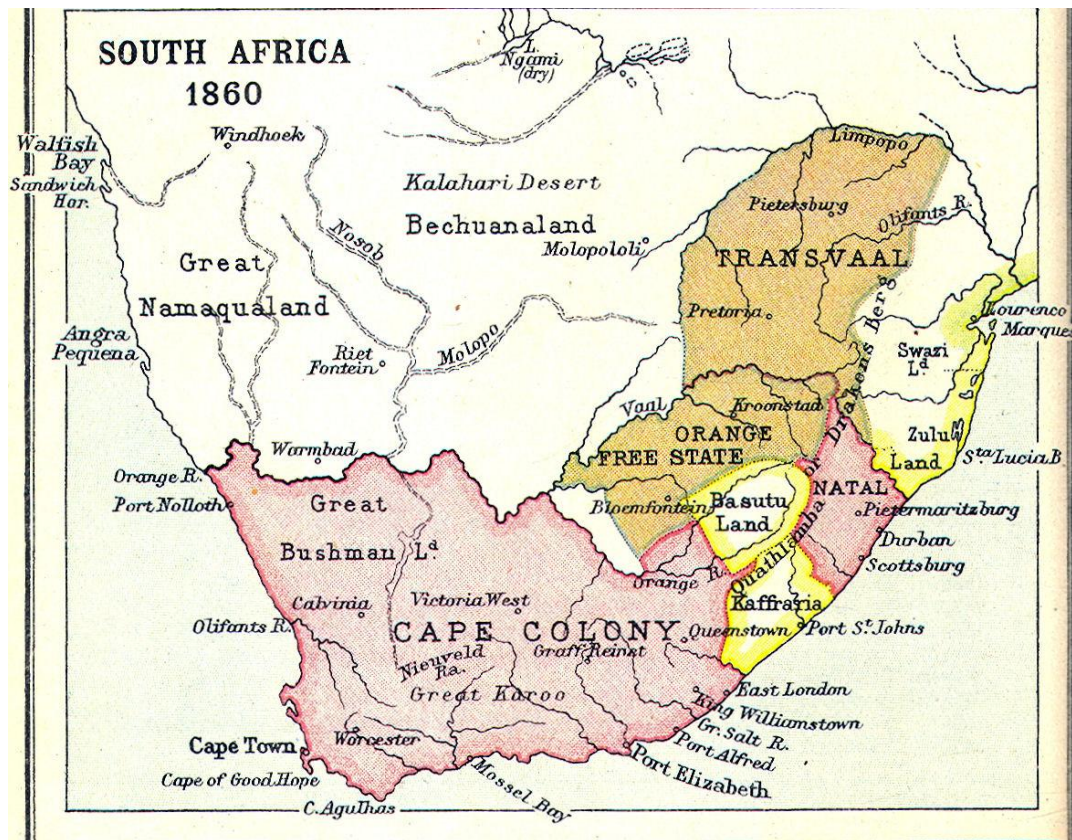
Venda: Increased from 524 100 to 621 400 hectares.

The land acts of 1913 and 1936, and the figures shown above, disproves the reckless claim that “land was stolen” from black people by whites. In reality, land was added over many years by the white government to black people in the trust areas for their benefit. In addition to this, land was set aside for black workers within white areas for residential purposes.

26. The historical record shows that black tribes in Southern Africa were **concentrated** in specific areas. Even today the South Sotho-nation, the Swazi, and the Tswana have their own territories in Lesotho, Swaziland and Botswana.

In order to illustrate this important conclusion we include a map, dating from 1860, clearly showing the principle areas occupied by Xhosa, Basutu,

Swazi, and Zulu peoples. It may not be an accurate map, but it illustrates the historical reality of separate areas for the diverse nations in South Africa. It also shows the extent of white land in 1860 in the Cape Colony, as well as in the Orange Free State and the Transvaal Republic.



Yet another map, dated 1886, underscores the pattern of distinct areas occupied by black nations and the territories belonging to whites:



27. Looking at the demographic situation pertaining to 100 and 150 years ago, one is struck by the salient fact that various races and ethnic groups lived largely in separated areas. This was true of the Tembu, Pondo and Xhosa people; but also of the Zulu people, The Venda, the Basutu, The Griqua, the Bushmen, the Tswana, the Ndebele, the Pedi, the Shangaan, the Swazi and the White people. There were no Zulu, Swazi, Tswana or Xhosa tribes with traditional land in the Western Cape, Namaqualand, the North Western Cape Province, the Free State, the Transvaal or the Karoo. There were no White people living in Tembu-land, Pondoland and the Transkei, no white people in Zululand, Lesotho or Swaziland. These facts render the claim that “the land belongs to the people” totally meaningless. In reality, the land belonged to specific ethnic groups located in clearly identifiable areas. This perspective is of great importance for the consideration of the history of land occupation, political development and land use in South Africa.
28. It is known from several academic studies that tribal traditions in Africa did not follow the Western principles of **private ownership**. There were no deeds of transfer, no documented ownership registered in the name of private individuals. Anthony Harrigan (in his book, *Red Star over Africa*, Nasionale Boekhandel Bpk., 1964, page 26) explains this briefly as follows:

“The tribe concept is something outside the experience of most Westerners. Yet Africa cannot be understood without grasping the tribal feeling. The tribe is the ancient collective — a shelter for each individual and apart from which an individual is nothing. Exclusion from the rights of the tribe is worse than death; it is exclusion from communion with the living and the dead ancestors... The conscience he listens to is not the still, small voice of individual conscience that Western man know, but the voice of the tribe — the message of its laws and customs.

For the Westerner, transferring land is not a difficult problem. An exchange of papers, a financial transaction, and the matter is at an end. But exchanging tribal lands is not so simple. The spirits of the tribe are in the lands they cultivate. And a tribe cannot leave behind the ancestral spirits. This may seem a minor thing to some Western liberals, but it is not so unimportant if one is introducing a grand scheme of land reform. Indeed land reform may be impossible in many areas of Africa until there is even more basic reform of beliefs and an abolition of superstitions that are centuries old.”

The tradition of **tribal ownership** was honoured and recognized in the land acts of 1913 and 1936, as well as in other legal arrangements made with respect to the occupation and the use of land. It formed the basis of the **homeland policies** implemented after 1948, whereby the various nations were actively supported to develop the territories where they lived. Some of these territories eventually attained full political independence.

Land use and productivity

29. As pointed out by various authors, the productivity of land in traditional black areas did not develop in line with the growth of the black population in those areas. Authors A.T. Culwick and J.C. Oosthuizen says the following (*The Inequality Principle*, Dolphin Press Pty. Ltd., 1972, page 21):

The Whites are undoubtedly the most productive group economically, the Black nations the least. A South African Government publication, Nutrition and the Bantu (Dept of Information, Pretoria, 1971), shows clearly that the Bantu Homelands contain sufficient land to feed twice the Bantu population of South Africa at an optimum standard of nutrition. Instead, the homelands do not produce enough even for the 46,5 percent of the Bantu living there. Food has to be imported. It therefore follows that if the Bantu are allocated land formerly farmed by Whites to White agricultural standards, total production will drop. The satisfaction of Bantu claims to more land is therefore not an economic proposition, whatever other merits it may be deemed to possess. This state of affairs exists in spite of Herculean efforts by Government over the years, and vast expenditure on Bantu agriculture, soil conservation, water, stock improvement, crop introduction, etc.”

30. The dilemma with respect to the use of tribal land was known a long time ago. In an essay published in 1929 (*The Economic Aspects of Native Segregation in South Africa*, P.S. King & Son, Ltd. Westminster, London) the author, John Kirk, points out that “the native areas are not so much overpopulated as over-stocked and under-cultivated”. Kirk writes (page 62):

The Native’s inability to make good use of his land means a continual dependence on wage-earning, even to the extent of buying grain from outside. This dependency is accentuated by the usual improvidence of the uneducated Native. A good crop merely means the paying off of old debts, and rarely an opportunity to save.

Kirk further confirms the traditional system of ownership and its consequences (page 66):

Before the advent of the European all Native ownership was communal — the chief’s dominium being essentially a trust. This communal system may lead to the arbitrary allocation of land by chiefs, the victimization of the chief’s enemies, removals of families from site to site at short notice, and sometimes the suppression of activities of a progressive nature as supposed indication of an individual claim to land.

The author declares that “it is obviously best that extending Native areas move step by step with intensive development” (page 95). This is exactly the argument we put forward in this submission, provided that land belonging

to white owners be respected and accepted as an asset to the economy of South Africa. Intensive development of agricultural skills takes time, it cannot be achieved without thorough training and experience.

31. In his essay, John Kirk stresses the fact that “most land sold to Natives represents a loss to the interests of commercial as opposed to subsistence agriculture.” And he quotes Sir William Beaumont as follows (page 95):

The ownership of the land by a Native does not tend to the elevation of the owner nor the general progress and prosperity of the country. It is for this reason that one consistently hears it is a waste of good land to allow it to come into the possession of a Native... While, therefore, it is quite true that most of the reserves are overcrowded, this is only so because of the uneconomical manner in which the land is occupied and cultivated, and the overstocking which goes on without let or hindrance, save for losses through drought or disease.

It may be argued that such a negative view is based on the situation as it pertained in the past, but these experiences were obviously similar to what happened in the recent history of commercial farms transferred to “farm workers” in Zimbabwe. And it is now also happening in South Africa. A broader examination of the problems of land use on the continent can be gleaned from the book *Africa in Crisis – The causes, the cures of environmental bankruptcy*, by Lloyd Timberlake, edited by Jon Tinker, and published by the International Institute for Environment and Development, 2015.

32. An accomplished researcher working for the *South Africa Institute of Race Relations*, Anthea Jeffery, writes the following in her book, *Chasing the Rainbow* (published by the SAIRR, Johannesburg, 2010) regarding the scenario in South Africa (see pages 99-100):

About 50% of the land reform projects implemented to date have failed, beneficiaries proving unable to produce any marketable surplus. Emerging farmers face major obstacles, including shortages of finance, inadequate infrastructure, limited skills, and poor access to markets. In some instances, black farmers have also had their land expropriated, either for urban development or via subsequent land claims. Since commercial farmland subject to restitution claims may not be sold or encumbered without state consent, some farmers have stopped farming, sometimes for years, because of long delays in the settlement of claims.

The failure rate of farming operations after successful claims has since been estimated to be more than 90% . This was already the situation described eight years ago, in an article by B. Boyle on South African land reform, as published in *The Times* on 31 March 2010, reporting that “90% of redistributed farms are now unproductive.”

The fact that the ANC-government refrained from transferring title deeds to the new owners in the majority of cases is further proof of the

socialist nature of the land reform project. Without legal ownership the “emerging farmers” cannot proceed to obtain loans or any support from commercial banks, and they remain dependent on financial aid from the government.

In conclusion

33. Taking into account the various factors having an impact on *issues of land ownership and land use*, it is our firm belief that allowing government the power to expropriate land without compensation will have the following serious consequences:
- (1) It will strengthen the revolutionary programme to establish a socialist economy in South Africa, similar to what happened elsewhere in Africa.
 - (2) It will lead to land invasions on the same scale and of the same violent nature as in Zimbabwe.
 - (3) White farmers will continue to emigrate to other countries, as evidenced by the fact that many commercial farmers in South Africa are already considering emigration to countries such as Zambia, Georgia or Australia, following the announcement of the government’s intention to expropriate land without compensation.
 - (4) Expropriation without compensation will not alleviate poverty in any significant way, and its contribution to employment will depend on huge financial support from various governmental institutions.
 - (5) It will increase racial tension between black and white in South Africa.
 - (6) It will eventually destroy the viability of the South African agricultural sector.
 - (7) Food shortages will increasingly occur, just as in the case of Zimbabwe.
 - (8) It will negate several basic rights entrenched in the Constitution of South Africa.
 - (9) It will clash directly with the existing ethos of the South African economy, which is evidently built on the principles of private ownership, entrepreneurship and sustainable business development.
 - (10) Expropriation of land will place a huge burden on fiscal resources, since the responsibility to establish productive enterprises in such areas will be the government’s.

- (11) Expropriated land will in most cases become unproductive.
- (12) Land adjoining expropriated land will be devalued.
- (13) It will lead to more opportunities for nepotism and corruption in South Africa, since the allocation of expropriated land will be in the hands of politicians. It will not be regulated by the operations of a free market, as supported by applicable legal procedures.
- (14) It will adversely affect investment in future agricultural development in South Africa and, at the same time, it will predictably damage the image of the country in the international community.

Signed:



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