EXPROPRIATION FOR (RADICAL) ECONOMIC TRANSFORMATION:
political viewpoints & alternatives

Prof Hanri Mostert
DST/NRF SARChI Research Chair: Mineral Law in Africa
Faculty of Law, Department of Private Law, UNIVERSITY OF CAPE TOWN
Visiting Professor: RIJKSUNIVERSITEIT GRONINGEN

with

LLB Students: Advanced Property Law (Expropriation) Seminar,
UNIVERSITY OF CAPE TOWN
Apartheid
Land Law

Group Areas
Statutory exclusion

Double standards
Marginalization and impoverishment

Insecure land relations
SA LAND REFORM: THREE TIERS

**RESTITUTION**
- REDRESS
- Correcting Past Injustice

**REDISTRIBUTION**
- ACCESS
- Landownership & Title to Land, rather than diversified rights

**TENURE SECURITY**
- SECURE LAND RELATIONS
- Formalisation, Diversification
REDISTRIBUTION GOALS: FROM 1997 WHITE PAPER TO TODAY

ORIGINAL GOAL: 30% OF FARM-LAND IN BLACK HANDS BY 2014

REALITY: 8-10% OF FARM-LAND IN BLACK HANDS IN 2017
REDISTRIBUTION POLICY: HISTORY

- RDP
- GEAR
- SLAG
- LRAD
- Recap & 50/50
Total area of South Africa: 122,081,300 ha

- 67% 'White' Commercial Agricultural Land
  - 1% Former 'coloured' reserves
  - 2% Ingonyama Trust (former KwaZulu)
  - 2% Other customary lands held in trust by the state
  - 10% Ex 'homelands' other than KwaZulu

- 15% 'Black' communal areas (most state-owned)
  - 1% Other provincial, including schools, hospitals, agricultural
  - 1.6% Other national, including Home Affairs Justice, Agriculture
  - 0.4% Military, police, prisons
  - 7% Conservation Areas

- 8% Remainder, including urban areas
  - 2% Metro
  - 6% Other, including non-metro urban areas

The origins of the 87/13% figure for white/black land ownership

The 87:13 ratio of white to black ownership of land derives from an apartheid blueprint based on the Land Acts of 1913 and 1936 that had not been completely implemented by 1994. Under apartheid South Africa was divided between a core of about 85% of the country deemed 'white' politically, and a periphery of ten ethnically defined 'African' 'homelands', plus a number of tiny 'coloured' reserves. Race-based land dispossession and relocation caused suffering and hardship for millions of black South Africans (SPP 1983) but failed to realise the master plan. Throughout the twentieth century growing numbers of 'Africans' and most 'coloureds' continued to live in so-called white South Africa, with varying levels of tenure security: on white-owned farms and conservation lands, in urban areas, and even on a small number of black-owned properties that escaped forced removals.
Land Reform: Political Cycle

Criticism and Pressure → Political Commitment → Revision → Hesitation to Implement
“WHITE MONOPOLY CAPITAL”
“RADICAL ECONOMIC TRANSFORMATION”
Which direction?
Expropriation as a response to slow land reform?
Expropriation Law in South Africa

Expropriation Act, 1975

Abolition of Racially Based Measures Act, 1991

Constitution:
Interim, 1993; Final 1996
Expropriation Bill [B 4B-2015]

 Introduced in Parliament: Portfolio Committee on Public Works (Feb 2015)

 Public Comment (Jun 2015): Further deliberations

 Revised Version (Feb 2016)

 National Assembly Adopted (Feb 2016)

 NCOP Select Committee (March 2016)

 President (Referred Back)
New Process

- Inspection
- Consultation
- Expropriation
- Compensation
The Expropriation Bill should expedite land reform

The Expropriation Bill should be used only as a last resort

No Expropriation Bill! Transfer all land to the State!

Operation Phakisa
**Operation Phakisa:** “just and equitable” compensation does not mean the State should pay a premium for land reform  
**Zero Compensation Possible**

**Narrower Understanding:**  
- Intellectual Property  
- LR = Restitution Only  
- Market-based compensation  
- Critical of Land Valuer General’s Office

**Radically different approach:**  
- Land use licences  
- State custodianship  
- No Compensation – see MPRDA
ALTERNATIVES?

VOLUNTARY RELINQUISHMENT OF LAND:

“... a radical departure from past land reform initiatives and is based on sound business principles, mentorship and training of emerging black farmers to become successful commercial farmers.”

Witzenberg Partners in Agri-Land Solutions (PALS)
Melissa Mtolo, Sashen Govender, Damian De Klerk, Rose Buckland, Piers Rosholt, Asma Khalifa, Ben Prinsloo, Caroline de Castelain, Dalit Anstey, Geoffrey Allsop, Katie Jennings, Keanan Wheeler, Kelsey Pailman, Lisa van Niekerk, Maria Louw, Namhla Bula, Paula ten Hope, Richard Thatcher, Romi-Jean Martin

LLB Students: Advanced Property Law (Expropriation) Seminar

THANK YOU

mlia@uct.ac.za