

The Land Question: What is the Answer?

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In 1993, President Cyril Ramaphosa, who was then secretary-general of the ANC, spoke at the Land Redistribution Options Conference in Johannesburg, where a future plan for land reform was being thrashed out. He said in his opening remarks:

‘The massively unequal distribution of land is not merely an unfortunate legacy of apartheid; it is the totally unacceptable continuation of apartheid.’

Looking back now, from 2018, this statement stands as a damning indictment of the ANC’s track record in government, because we can still say that this unacceptable situation has continued.

My lecture today will pivot on two concerns. Firstly, I will argue that there is not just one land question in South Africa; there are several. How should these land questions be resolved? I will raise seven land questions and suggest some options for debate. Secondly, in closing, I will challenge us all to think about what is the role of a University in deepening and democratising our conversations and supporting and shaping this process.

Public hearings have exposed the extent of division and grievance

The public hearings process that is underway, convened by Parliament’s constitutional review committee, has exposed the extent of division and grievance on questions of land.

Land is simultaneously a material issue about poverty and inequality (who owns assets in our economy) but it also symbolises identity, home and citizenship. We need to acknowledge that the land question is not just a matter of farming, or the economy. It is something visceral and raw, and what we have seen in recent weeks and months is that South Africans are deeply polarised – and this is overwhelmingly along racial lines. We see, time and time again, white, mostly male, farmers arguing against expropriation without compensation. We see, time and time again, old black women and men speaking of the hardship and pain of land dispossession, and of what it has meant in their lives. And young black women and men talking about how this loss continues to affect them and how the poverty it produced continues to shape their lives, even when they have moved to the cities. We are talking past one another.

There is anger, and there is fear. But there is also some hope of something different to come. What is that something?

We must acknowledge our intergenerational inheritances

Let’s start with this: what can we agree upon? Land dispossession *is* a basis of racial inequality that has been inherited and continues to be perpetuated across generations.

There has been intergenerational inheritance of poverty, for those who lost land but also livestock, homes, opportunities, were forced into demeaning and exploitative migrant labour and Bantu education. The effects of all this is still held in our current generation. There has also been intergenerational inheritance of privilege, for those who got land, accumulated wealth, invested in education, got good (and protected) jobs, and amassed wealth, now often far away from the land itself.

Giving the land back by itself will not automatically undo all of what has been passed down to us by these generations. But land reform must happen. This surely is our common ground, and not in dispute. The disputes are elsewhere, and later I will identify seven questions on which we might well disagree.

What is government's track record on land reform?

What was land reform meant to do and what has actually happened? Coming into government in 1994, the ANC promised to start by redistributing 30% of commercial farmland within the first five years, but by 1999 less than 1% had been redistributed. Here we are 24 years later, and about 9.7% of commercial farmland has been acquired or redistributed (though there are some doubts about official statistics; the real figure could be lower). There has been no national monitoring programme to say what the outcomes have been, but from scientific case studies as well as media reports and anecdotal evidence, we know that many of those getting land have been unable to use it effectively to improve their lives – for two reasons, one of which is the imposition of inappropriate business plans that have attempted to replicate a commercial model of farming and second of which is an absence of appropriate support, itself the result of the dismantling of the institutions – marketing cooperatives and funding institutions – that built up white capitalist agriculture over the past century. So the problems relate not only to the pace of reform but also its inadequate outcomes and wider policy context. There is massive disillusionment.

The High Level Panel of 2016-2017, appointed by Parliament and chaired by former President Kgalema Motlanthe, found that the state has mismanaged land reform; there has been poor policy and leadership, weak institutions, low budgets, and corruption. It explicitly found that the Constitution is not to blame for all this. But as we now know, the popular view is that there should be a change in the Constitution. Most people have not read or engaged with the High Level Panel report. The report itself depicts a state hostile to the interests of poor; shoring up private ownership and chiefly powers over the interests of the majority, and in violation of the Constitution.

The budget for land has never exceeded 1% of the national budget, and currently land reform accounts for just 0.4% of it. Bear in mind that a large proportion of the budget is not for buying land but for operating costs, including paying the salaries of civil servants. Political priority must mean an increase in the budget.

The pace of land redistribution has declined from about half million hectares per year at its zenith in 2007/08 to one-tenth of that in 2015/16. This has nothing to do with the Constitution; it has been a political choice to dismantle land reform over the past 10 years.

Society has been changing

Meanwhile, society has been changing, and one of the great changes has been urbanisation. We now are 62% urbanised. So the land question is no longer a purely rural or agrarian issue, but of course also an urban one.

Change has been underway in the rural areas too. Whereas there were 60,000 commercial farmers in the mid-1990s, with policy changes and agricultural deregulation, this number has shrunk to only about 35,000, and now there are more companies than individuals owning farms.

Further, more than half of all farmland in South Africa has been transacted since 1994. This means that while *some* who own the land got it through colonialism or apartheid, *most* did not. A lot of the new owners are companies rather than white families. Multinational companies, pension funds and others are among the growing owners of farmland.

We are moving backwards

So, doing more of the same is not going to be the solution. From available data, we estimate that the scale of forced evictions of poor and black people from the land is greater than the scale of land redistribution – and of course those being evicted and those getting land are normally not the same people. In the first decade of democracy, over 2 million people were displaced from farms, of whom 940,000 people were forcibly removed from farms. Overall, this means that we are moving backwards in terms of black people's access to land. In reality, as a society, we are engaged in an **anti-agrarian reform**. And an anti-land reform. Fewer, richer, people, mostly big companies, are coming to own most land, while workers continue to be expelled from farms.

We need an entirely new vision and plan – also for communal areas

The plan must recognise that the land question is not restricted to commercial farming areas: people, especially women, in communal areas, have insecure rights to land. Many people are losing their land rights because of deals between government, chiefs and mining companies. We see this in the platinum belt in the North West, where corrupt deals have been struck, over people's heads, leading them to be dispossessed – whilst others harvest mining royalties. We see the same threat to the community of Xolobeni in the Eastern Cape, which is resisting forced removal. They don't want expropriation and, if expropriated, they want to reach agreement on compensation *before* being removed from their land. Here is the real politics of land in our country, in which it is mostly poor and black citizens whose property rights are under attack.

Here, in the communal areas that make up 13% of the land, there has been no land reform, only an interim law, leaving 30% of our people, 22 million people, without secure rights. Growing commercial interests in these areas have spurred corrupt deals, prompting Motlanthe to refer to chiefs as 'village tinpot dictators'.

So there is not one land question. There are multiple questions: urban and rural, and even within the rural, between the commercial farming areas and the communal areas. The land questions broadly relate to questions of access (who should get the land) and tenure (what rights people should have).

Dispel myths about the Property Clause

Before I get to the detail of the land questions, I would like to dispel some myths about the property clause ([see handout 1](#)).

I will discuss the Constitution only briefly.

The first point is that the ANC got what it wanted during the constitutional assembly in 1995. Remember that the property clause was not negotiated at CODESA. It was not part of a pacting phase.

As Advocate Tembeka Ngcukaitobi has pointed out, there is a common misconception that the property clause provides a blanket right to private property. It does not do so. Section 25(1) provides a negative right, which is the process through which anyone – a farm owner, a farm worker, someone living in a backyard shack, a suburban homeowner or someone living in a communal area – can be deprived of their property. It just says that we should not be discriminatory in the way we deprive people of property and there should be no arbitrary eviction. But the clause of course then goes on to say that the state can expropriate, in the public interest, for land reform. And compensation should be ‘just and equitable’ – but this has never been used. Could compensation be set at zero? Yes, as long as this is just and equitable. Do we want a dispensation that is unjust and inequitable? Or do we want confiscation?

The rest of the property clause says there must be land redistribution – access to land on an equitable basis (Section 25(5)). There must be tenure reform and stronger property rights for people whose rights have been insecure because of colonialism and apartheid (Section 25(6)). There must be restitution for those dispossessed unfairly (Section 25(7)). And if you are still not sure, then read the override clause (Section 25(8)), which says that nothing here can impede the state from taking measures to achieve real transformation. **The mandate for transformation is clear.** Nothing can hold the state back. The state must go forth and conquer. And it did not.

The property clause thus grants only limited procedural safeguards to existing property-owners while mandating transformed property relations between the landed and the landless and between owners and tenants. Agreement between the political parties was reached at midnight on 18 April 1996.

Remember that the National Party and others took Section 25 to the Constitutional Court and tried to get it struck down – and failed to do so. The ANC got precisely what it wanted in Section 25. It got a **mandate for transformation**; a provision for property rights for the property-less and for those with weak tenure, which would override private property rights. This is all about transformation.

Yet government has never expropriated land for land reform purposes, as expressly provided for in Section 25. It has chosen a market-based approach: the World Bank proposed a willing buyer, willing seller paradigm, on the basis that it had worked in Zimbabwe during the 1980s. It then also promoted the same paradigm in Colombia and Brazil during the 1990s. All have been slow programmes that have fuelled popular resentment and often facilitated elite capture. This has been a political choice, and appears nowhere in the Constitution.

We mean different things by expropriation without compensation

My view is that while the ANC and EFF voted together in Parliament in February ([see handout 3](#)), to appoint a committee to look into amending the property clause to enable expropriation without compensation, this moment of convergence was an illusion. They were never agreed on what expropriation without compensation means, and how it would be applied.

The ANC resolution at its 54th elective conference in December 2017 said that expropriation without compensation should ‘one of the key mechanisms available’ to government ([see handout 2](#),

paragraph 15). It did not say that the property clause would need to be amended to achieve this. Notice that it does not call for any change to the Constitution. It provides no reason as to why expropriation without compensation is needed or what problem it would solve. It insists on certain caveats, like there must be further investment in the economy, and land reform must not damage agricultural production or food security (paragraph 16). It is also very moderate, focusing only on unused and under-utilised land, or speculative or indebted land (paragraph 17). It does not target productive farms or valuable urban land. The EFF in contrast has been consistent in calling for nationalisation – the term ‘expropriation’ is misleading as in fact what is meant is confiscation of everyone’s property.

The hearings

So, if we consider what the Constitution says, and what the government has done, the hearings have actually asked the wrong question to the wrong people. The question should have been posed to government: why have you not used your powers to expropriate land, including with no compensation? Instead, citizens have been asked about amending the Constitution.

Last Friday I was on a panel at a colloquium convened by Professor Lungisile Ntsebeza at UCT, where these issues were debated, and I agreed with Professor Fred Hendricks of Rhodes University that those of us who advance land reform should thank the EFF for putting the land question centre-stage in our politics. While the property clause might be a scapegoat, and deflect from the real issues, the debate can be productive, and open up opportunities for us to re-imagine a different future.

The current conjuncture

On Tuesday evening, the President in an address to the nation – as President of the ANC – announced that the ANC would promote an amendment to the property clause. What was surprising was, firstly, the timing, in that he pre-empted the findings of the constitutional review committee process currently underway. Secondly, he said that constitutional amendment was not needed, since it is already possible to expropriate land without compensation, as long as you can justify this to be just and equitable. So the Constitution is not the problem. In fact, he took responsibility for failure. Third, he went on to say that even though it is not needed, the ANC will support constitutional amendment.

So one big question now is: what would a new version of a property clause look like? We can’t have *no* property clause, given that it provides the legal basis for all land reform. Should it allow discriminatory law or arbitrary deprivation of property for all South Africans? Changing the Constitution, by itself, will not make one iota of difference, given that the Constitution has not been used. The question is the politics. What alternative wording would you propose?

At the same time, our problem in South Africa is not primarily one of production; it is one of distribution. Similarly, with land, our primary problem is not how to get the land, it’s who to give it to. None of these depend on expropriation without compensation. They have nothing to do with how the land will be acquired. The real political questions are the following seven provocative questions.

Seven provocative questions

1. Land reform for whom?

This is about the class agenda. Let us talk about class, alongside race and gender. Henry Bernstein, the British Marxist academic, asks four questions which have framed radical agrarian political economy: who owns what (a question of capital), who does what (a question of labour), who gets what (a question of class formation) and what is done with the surplus (a question of accumulation). Even though in South Africa we tend to look only at race, I challenge all of us here to ask these questions, and to ask questions about class – and about gender – because remember that only 23% of beneficiaries of land reform are women, and they have got the least land. And we know that urban businessmen have cashed in, as have white-owned agribusinesses that have signed up farm workers as shareholders in phony BEE deals. So let's get real about land reform. The question is not merely how to do more of what we are already doing; it is to entirely reconfigure the entire system, who it is for and what it is going to produce.

Confiscatory land reforms have been highly successful in several places, in particular points in time, in East Asia in particular, where they laid the basis for broad-based growth and reduced inequality. For instance, in Japan, South Korea and Taiwan from the late 1940s into the 1950s and later in the Indian states of West Bengal and Kerala in the 1970s, where classes of landlords were deprived of their land, and this land was turned over to tenant farmers who had been paying rent to them for years – for generations. In these cases, it was obvious who the land reform was for: it was 'land to the tiller'. In our case of de-agrarianised South Africa, where black people have been kicked off the land, it is not so clear in whose interests the land is to be taken. Should it be the farm workers? Should the land be shared among those who work it, as the Freedom Charter demanded? Or black farmers who are already farming in the communal areas? Or urban businessmen (yes, it has mostly been men) who want to diversify, and farm on the side while running other businesses? These are the questions we should ask.

And the class agenda has changed over time. In the Mandela era of the 1990s, the focus was explicitly on the poor, and there was a means test, equivalent to the housing subsidy: land would be only for the poor. Mbeki's government changed this, and land subsidies were available to any black South African, with a focus on those with the potential to become commercial farmers – and had their own capital to invest. This meant handing farms from a white commercial farmer to a black commercial farmer – not agrarian reform, and often replicating the same labour relations, but now the farm workers had a black boss. In the Zuma period, again there has been elite capture of land reform, but now people getting land do not get title. I will come back to that.

So, instead of current policy, which opens up space for elite capture, an alternative answer would be to give priority for landless and land-poor farmers, farm workers, the peri-urban landless – in other words, not primarily commercial farmers or agribusinesses. Should we aim to clarify what is 'equitable access' to land? Does this mean priority should be given to those who have nothing and are in greatest need?

2. Land for what?

What is land reform for, and what should its outcomes look like? One of the main shortcomings of the programme to date is that it has tried to force people into big commercial projects that they do not control – and agribusiness companies have cashed in, becoming strategic partners. Instead, could we think about a land reform that promotes smallholdings for individuals, families and small groups, plus worker cooperatives on larger farms, for food production? And should there be options

for access to land, smallholdings and residential land, for non-agricultural purposes? In other words, let's not be restricted to replicating the big-farm model, but think of alternatives, both farming and residential.

An example of a different model is the Philippi Horticultural Area in Cape Town, where small-scale farmers have launched a Food and Farming Campaign. The vision is to acquire and subdivide the big commercial farms that feed Cape Town, and supply us with our vegetables, and redistribute these farms to small-scale farmers. Perhaps this should be the kind of model to be pursued. What should the outcomes of land reform look like? What would success look like?

3. Where?

Which land should be targeted, where? Presumably we want not only land that is being offered on the market; rather we want well-located land. And there must be smallholdings – this means that the state must be willing to subdivide. So surely the land that should be redistributed should be strategically-located land in areas of highest demand, including commonage and private land, urban and peri-urban, subdivided where needed – in other words, the state should get the land that is needed, not the land offered on the market. This will require expropriation. But let's get to that later.

Land reform is always about overcoming spatial apartheid, whether in the countryside (overcoming the divides between the commercial farms and the communal areas of the ex-Bantustans) or in our towns and cities (overcoming and blurring the lines between the inner city, white suburbs, black townships). And I believe that now the political impetus will come from the cities. This is where occupations are happening. The ANC operates on assumption chiefs will deliver the rural vote. But South Africans are urbanising and the ANC is seeing the urban vote being eroded. I argue that land reform must now urbanise, while continuing to address the demand for farmland.

To make land reform work will require spatial targeting.

One possibility is agrarian reform for the workers and poor: targeted acquisition of land that is well situated close to towns, plus subdivision, to make available smallholdings for people to live on and use as they like. Other rural farming areas can also be targeted, especially those with good infrastructure and access to water.

A second, and no less important, likely focus should be inner-city areas that are undeveloped, to give housing to the poor, and peri-urban areas that can be subdivided into well-located smallholdings to provide food to the cities.

4. How are decisions to be made?

A problem we have had is that we have had an opaque and unaccountable system up to now, in which decisions about who gets what are taken behind closed doors and without any accountability to citizens. Why do some people get big commercial farms while most get nothing? This has led to elite capture and corruption, including collusion between landowners and state officials.

Who should get what and how is this to be decided? The answer, surely, is to democratise the whole land reform process, including how people are selected to get land, and the land they need, via participatory processes at local level. Instead of an elite, obscure and bureaucratic process, surely

we need to democratise land reform and beneficiary selection. This must involve a new form of democratic and participatory politics, and embedding land reform in local government consultative processes, and in integrated development plans (IDPs). Just imagine if citizens could discuss what land will be given to whom, in an open and democratic fashion.

5. How to get the land?

Should this imply expropriation in all cases, or expropriation combined with negotiated transfers?

Once it is decided who needs or wants which land, for what, the question arises as to how to get it. Bear in mind that a foundational principle in the Constitution, in Section 1, is about founding provisions, non-racism and non-sexism, and the Limitations Clause, Section 36, requires that any limitation is reasonable and justifiable in a democracy. These can be changed. We can have discriminatory law – but that would require a 75% majority vote, which is unlikely.

More likely, and in my view preferable, is that we have a range of methods of getting the land. The state can expropriate – as it could have been doing, and has not, for the past 22 years. It can also bring landowners to the table, and say listen, “We want this land, and we have earmarked it for land reform”. Will you give it to us? Or drive a hard bargain: push down prices. Or buy on the open market. But without the threat of expropriation, the state’s hands are tied, so expropriation – which is where the state overrides private interests in the public interest – is an essential part of the mix.

Should expropriation happen in every case? This would likely slow land reform down. Good test cases will be needed to show precedents so that they are not all challenged in the courts. Perhaps we need a mix of expropriation alongside other methods.

6. Whether or not to compensate?

When expropriating, should people who have owned or held property be compensated? Again, this hinges on whether there is nationalisation or whether it is determined on a case-by-case basis. From all appearances, it seems that the ANC’s position is that this will be done on a case-by-case basis, taking into account what is just and equitable.

This is why: most commercial farmland has been transacted since 1994. This means the current owners are mostly not those who inherited directly from apartheid. The new owners include black South Africans, white South Africans, corporate owners, foreign companies – a range of new ownership has been introduced.

Those who benefitted from apartheid have moved off the land. While there are only about 35,000 commercial farmers, there are over 4.5 million white South Africans, and it would be hard to find a single one who did not benefit from apartheid. This accumulation of capital and privilege has moved off farmland and into residential property, but also into intellectual property (education), financial assets (stocks on the JSE), and so on. Should they – we – I – not pay for the land to be returned?

In other words, who should pay? Should beneficiaries of apartheid not pay – even if they are not the current owners?

And what of the people in informal settlements, communal areas and farms who are evicted? What forms of compensation should the poor get? And how can we have a legal framework that provides

clarity as to how we approach compensation for the poor and rich, black and white, private and informal owners, within a common citizenship?

What could a new compensation regime look like? If zero compensation for some, and compensation for others, there will be a need to specify how to deal with different circumstances. For instance, there presumably must be a category of properties that can be expropriated without compensation. Which are these? The ANC proposes vacant, unused and under-utilised land, as well as land held for speculation and hopelessly indebted land. I would suggest that there is no good cause to compensate for land where there are already informal settlements, or abandoned inner city buildings, or where farm dwellers and labour tenants already occupy and use land. There may, though, be categories of land where compensation is warranted, especially where these are the only assets held by citizens, and on which they have worked for years, and on which they rely. Which are these? When to compensate and when not?

7. With what tenure?

Should people get private title to land? Or should there be legal recognition of their rights, even if we go with a model of state leasehold and state trusteeship? There is much experience of nationalisation across many African countries. For several years I have researched how international investors have colluded with African governments to give them community land, over the heads of local people. These are state-condoned land grabs.

So how do we theorise the state? Our state? Should we trust the state as trustee of all land? Let's debate this. In theory, and politically, I believe in this. But I have reservations, based on these experiences of state-corporate-chiefly land grabs across Africa. The same can be said about how the state and chiefs override community land rights in SA's communal areas. What does it mean when the state has nationalised the land, when the state decides who can get access to what land, and revoke these rights? The state in South Africa has been dispossessing citizens; its capacity for land administration is in tatters and then there is a political economy question which is about the state's interests and whose interests it defends and protects when deciding who gets what land.

The answer about what tenure people should get depends on how you see the state, both its capacity but also its politics. No matter what model of tenure, rebuilding the state, after years of state capture, is going to be crucial. I will not rule out the feasibility of state ownership and nationalisation – but invite people to consider the question of what land rights they want.

My experience with the Proactive Land Acquisition Strategy (PLAS) projects in the Eastern Cape is that most people getting land cannot get title, and not even a lease, and the state has even taken to evicting beneficiaries who are unable to comply with state-approved business plans. So, being a tenant of the state can be insecure – as we see in cities where most evictions of the poor are carried out by the state.

Remember also that the state can get the land for free, but it will not give it to you for free. Our current policy is that people have to pay rent to the state for 50 years before being given an option to purchase it. So it might be taken for free, but this does not translate into being given for free. What do you think? Should people have to rent from the state?

The irony is that some political formations that promote state trusteeship have also been fighting against the state that is evicting people.

Concluding, then, we need to debate how people can get long-term secure rights, and should these take the form of private title or 30 year leases, or 50 year leases, and should these be given to individuals, families, communities or cooperatives?

The ANC resolution also said that, at the same time it promotes expropriation without compensation, strong action must be taken against those who occupy land unlawfully – but of course unlawful occupation of land is a major way in which our towns and cities grow, when people have no alternative but to build shacks on vacant land. Perhaps we should draw from the Brazilian model, which recognises long-term occupiers as de facto owners, and decriminalises their occupation. The High Level Panel proposes recognition of occupation – by the poor, and for their own livelihoods and not for speculation and profit – as constituting ownership after three years. So perhaps we should rethink land and property tenure. There are alternatives to private ownership and state ownership. Recognising the reality that most people hold informal land rights is key, and a new Land Records Bill could potentially provide the basis for people to record their informal land rights and start to challenge both private and state ownership.

UWC has a proud history of responding to the land question

Recall that during the mass democratic movement of the 1980s, UWC became known as the intellectual home of the left and, in the early 1990s, UWC was a centre of framing a new constitutional dispensation. At this time, around 1993, Brigitte Mabandla, Kader Asmal and Amy Biehl were among those who led a key conference which was held here which focused on what would a non-racist and non-sexist South Africa look like, and who would hold the land? This addressed not only redistribution of white-owned land but also chiefly power and the rights of women in customary areas. On the latter, there was no consensus – and sadly there still is none.

By 1995, the Programme for Land and Agrarian Studies (PLAAS) – now the Institute for Poverty, Land and Agrarian Studies – was established within the School of Government. It is now a stand-alone institute doing research across South Africa and across 22 countries within Africa. Because, while South Africa might be an extreme example of land dispossession, we are not entirely exceptional, and questions of land, race, class and gender are important around our continent and around the world.

The role of a University is both to reflect and to lead society. Beyond the sloganeering and rhetoric, can we as a University community take the conversation to a new place?

A final proposition

Should we as South Africans think that change will come from above? It will likely come from below, from society rather than the state. The law is an enabler but by itself won't produce transformed land relations. It is now up to us – as allies in academia and civil society and social movements – to do this. Finally, I am not interested in whether or not the Constitution changes. I am interested in what land reform we pursue. I think there are three dimensions to this:

- Firstly, building clearer rights for the state to expropriate without compensation and clarifying policy on when, where, how, why, who. A new Expropriation Bill is needed; one is currently in Parliament and should be amended and expedited.
- Secondly, and as a counterpart to this, and because we cannot always trust the state, which must be pushed to advance the interests of the poor, and needs to be held back from

allowing elites to capture benefits, we need to think about building the rights of citizens to hold the state to account through a Redistribution Bill.

- Thirdly, building alliances within and beyond Universities, between academics and students, civil society organisations and social movements. What could this look like? Should we have teach-ins? The role of universities and intellectuals is to add onto the anger with analysis. How do we build this together?

Or something else? Where does your politics, your intellect and your imagination, take you?

I will leave my input here, with an open invitation for you, as the University community, to come back with your responses to my questions, and your suggestions as to what you think should be done. What are your responses to my seven questions? How can UWC academics and students have better conversations about land? How can and must we contribute to society, and stand in alliance with society, rather than separate from it?

Abstract

Constitution-blaming has become popular. But society is miss-specifying the nature of the problem. Why has South Africa failed so spectacularly to address the demand for access to land, for restitution and for secure tenure rights? I will argue that this is not due to the Constitution, and specifically not due to the 'property clause'. Quite the opposite. Section 25 is a mandate for transformation, but this mandate has been violated and ignored. Rather than scapegoating the Constitution, those who are committed to seeing land reform succeed should focus not on strengthening the powers of the state - indeed, the state can already expropriate without compensation where it wishes to do so - but on strengthening the powers of citizens to hold the state to account. The question is therefore how those who want and need access to land, those who want to return to the land they were dispossessed of, and those who have insecure rights to land, can force a recalcitrant state to uphold their rights. For this reason, new legislation is needed which will define the right of access to land on an equitable basis. Land redistribution must become an enforceable right.

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