



# Challenging policy papers on farm land

**I**N THE March 26 edition of Network we recommended that the land reform programme and all legislation relating to expropriation be taken seriously.

Many people have since heard of the Department of Land Reform's share equity scheme. The related policy document is known as The Final Policy Proposal on Strengthening the Relative Rights of People Working the Land.

The stated objective of the Department of Land Reform in the policy document is to "rekindle the class of black commercial farmers which was deliberately destroyed by the 1913 Natives Land Act".

The plan in the policy document envisages a scheme whereby farm workers will automatically acquire an equity stake in the land they have worked on. Farm workers will be entitled to an increasing stake as their term of service lengthens.

According to the policy document the proposed scheme "can easily be adapted where there is enough goodwill between a farmer and his or her employees". No mention is made of how the scheme will apply to farms with multiple owners.

The following points emerge from the policy document:

- Farm owners will be obliged to relinquish 50 percent ownership of their farms.
- Farm owners will not be paid for the 50 percent relinquished.
- The government will make a deposit into an investment development fund to be spent on a number of objectives, not including payment for the loss of property rights. Mention is made of "dividends allocated by the (fund)" being paid to the old and new owners but there is no explanation of how dividends would be generated.

The stated reason that current farm owners will not be paid for relinquished equity is "the government will deposit its contribution into the investment development fund, not the farmer, for that would be double compensation".

Section 25 of the constitution provides that private property may be expropriated in the public interest but that compensation must be paid. The amount of compensation

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ment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, taking into account several factors, including the market value of the property, the history of the acquisition and use of the property and purpose of the expropriation.

While the scheme in the policy documents may arguably contemplate a kind of compensation to farm owners, the compensation appears to be entirely indirect with no guarantee of actual payments to the owners or that the sum of payments will relate to market value.

Attempted moves away from the criteria in the constitution have been seen before, for example in the Expropriation Bill. Draft legislation arising from the policy documents on farm land reform is likely to be challenged to the extent it falls foul of the constitutional requirements.

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