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Reply: how a government panel on land reform in South Africa is stuck in old ways

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As a member of the Presidential Advisory Panel on Land Reform and Agriculture, I am happy to respond to Prof Gran's commentary on the work and conclusions of the panel. Before I reply in detail it is important to provide some context and background to my comments.

Land reform is one of the unavoidable policy discussions that have dominated South Africa's agricultural policy landscape over the past two decades and promises to remain part of the discussions over the foreseeable future. More so, as data continue to show that the progress made thus far on land reform falls short of the government's 30% target at the dawn of democracy. Vink and Kirsten (2019), estimate that 20% of the targeted land has already been transferred away from white landowners to the State and black owners, and some through private and State-supported transactions including land restitution. These transfers have been through restitution, redistribution, private transactions and State procurement.

Moreover, South Africa's land reform programme continues to be marred by the poor and slow implementation, corruption and many failed farms. The failure to transfer land the State has acquired to the beneficiaries over the last 26 years can also be ascribed to the State's unwillingness to engage the private sector, agribusiness, and existing landowners to be part of the solution.

To contribute towards the better delivery of the land reform programme and address the failures mentioned above, President Cyril Ramaphosa assembled a panel of experts – The Presidential Advisory Panel on Land Reform and Agriculture (Panel), to undertake the task.

The Panel's report initially drew criticism from various farmer interest groups as it did not denounce the emerging policy proposal that South Africa should consider Expropriation of Land Without Compensation. While such critique is understandable, it shows that some critics lacked a clear understanding of the central mandate on this proposal. The Panel was tasked to outline "under what conditions should Expropriation of Land Without Compensation be applied". It was not to ask if the Panel agreed with the proposal or not.

Some scholars, such as Prof Gran, have already engaged with the details of the report and offered views on it. Prof Gran is not new in the South African land reform discussion. Some of his essential work includes the 2002 paper which explored the subject of power and trust in land politics in South Africa, arguing then that trust in government concerning land policies is waning, despite progress in the redistribution of land (Gran 2002).

This time around, Gran remains sceptical about the focus of South Africa's land reform policy proposals. Commenting on the Panel's work, Gran points out some supposed gaps in the final report from a political economy perspective (Presidential Advisory Panel on Land Reform and Agriculture 2019). Such supposed gaps include a lack of focus on improving local democracy and the absence of insight into striking a balance between state and market power and between liberalism and social democracy in South Africa. According to Gran the Panel offered limited insight or plan

about how land reform can progress in South Africa and how localised land governance can be supported and developed by including views of traditional and municipal authority.

What is not clear to me is what Gran's ask is: what are these authorities supposed to do? They cannot play a role in all types of land reform – certainly not in all instances of restitution. If he thinks about redistribution, I fail to see what he proposes exactly. And for communal land, traditional governance is accommodated in the Panel's report.

This exposition suggests a potential omission from the Panel, but I consider it a misjudgement of the Panel's report, its broad mandate and the diverse landholding and administration arrangements that exist in South Africa. First, the Panel had extensive consultation with all key stakeholders in South African society, including traditional leaders and local municipalities as Gran suggests. Second, Gran argues that local level land administration, based on African communalism, should be mainstreamed into land tenure arrangements. Instead of imposing a single land tenure model for all of South Africa, the Panel's report acknowledged the need for a mixed tenure model, capable of accommodating a continuum of land rights. Perhaps the report did not elaborate on this aspect sufficiently but it is addressed. Still, there was a general consensus that localised land governance of this nature should be given equal legal standing where it is recognised and applied. The Panel's report did not propose extending this to areas where it may not be practised at present as this would raise legitimacy concerns.

Finally, the Panel's report furthermore carried several proposals that could accelerate land reform in South Africa while mindful of the subject's sensitive political economy. This is something that Gran failed to observe in the Panel's report and in his critique; his exposition does not offer a single example of what his model of land reform is and where it has worked efficiently; after all, South Africa is not the only country implementing land reform.

Also, worth noting is that the Panel's report was released on the heels of the heated debate about the proposition of Expropriation of Land Without Compensation policy and possible adjustments of Section 25 of the Republic of South Africa's Constitution, which pertains property. This is an essential context. It means that the Panel had to think critically about sustainable ways to accelerate land reform, for slow progress would open room for destructive policies. This point is not to suggest that the Panel was in some undue pressure, and did not sufficiently consider the inputs and reflect on the subject; quite the opposite.

The Panel delivered to the call by laying down a list of proposals that the South African government can consider driving land reform. Some of the Panel proposals merely require political will to achieve whilst others require substantive amendments to the legal framework. The following recommendations do not require legal modifications:

- create innovative financing mechanisms;
- create a "land register" to house donations;
- Identify and release state land;
- Conduct a land audit;
- Subdivide land already acquired by the State;
- Providing tenure grants for individual occupiers;
- Root out corruption;
- Reallocating water rights in conjunction with land allocation;
- Finalise outstanding restitution and labour tenant claims; and
- Split the budget between reforming the commercial farming sector vis-à-vis land reform for social considerations.

Other recommendations in the report, which require amendments to the legal framework, including:

- Institutional arrangements such as the creation of a land reform ombudsman;

- Create legally enforceable rights for the holders of off-register tenure rights;
- Amendments to the municipal property rates regime;
- Altering the legal framework regulating land rights on farms
- Clarifying the role of traditional councils and communities in natural resource governance in communal areas;
- Expand the capacity and mandate of the Land Claims Court;
- A compensation policy for expropriation.

While some of these points are not new, if implemented in the current political-economic climate where the private sector also promises active participation, South Africa could make meaningful land reform progress.

To Prof Gran's critique, admittedly, the Panel should have perhaps been more vocal on strengthening the local government institutions – provincial and municipal – as these are critical agents of delivery of land reform.

In sum, the Panel offered a menu of options which could be considered to accelerate land reform in South Africa. The private sector participation will also need to be more pronounced in land reform going forward, from land donations to joint venture approaches. The Panel report is, in a way, a supplementary of the views elevated in Chapter six of the National Development Plan about the acceleration of land reform and revitalisation of the rural economy in South Africa (The Presidency 2012). The South African government should commit to its implementation, along with other social partners.

Disclosure statement

No potential conflict of interest was reported by the author.

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