

Leasing of restituted commercial farms: An alternative to achieving the National Development Plan

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Land restitution in the agricultural industry has not achieved the inclusive growth objectives of the National Development Plan (NDP) which include (1) increased and sustainable livelihoods for its beneficiaries, in particular, those from poor communities and (2) increased agricultural output. The writer considers the option of leasing restituted commercial farms as an alternative towards achieving these objectives. He goes further, calling for the leasing of a restituted commercial

farm to an ‘optimum farmer’² who will benefit the owners of the farm, the ‘optimum farmer’ and the society at large through increased production.

INTRODUCTION

South Africa has a history of land dispossession of its indigenous people, first by colonisation and then by apartheid. With the end of apartheid, land restitution became one of several pillars of the transformation agenda and of government policy. The purpose of the land restitution policy is to redress past injustices. It is widely accepted that land restitution has the potential to contribute positively towards social cohesion and to reduce poverty and inequality. This paper focuses on land restitution in the agricultural sector that consists of valuable fertile land currently used for commercial farming. It has been estimated that by far the majority of restituted commercial farms have failed. The failure has been attributed to various factors but most common among these are what could be classified as co-operative farms or those with group ownership. These failures are what are commonly referred to as ‘the tragedy of the commons’,

the conflict that occurs among the beneficiaries of land restitution.

This paper recommends that leasing of ‘restituted commercial farms’ to ‘optimum farmers’ should be considered as an alternative in order to achieve the inclusive growth objectives of the National Development Plan (NDP) which includes (1) improved and sustainable livelihood for the beneficiaries, in particular, those from poor communities and (2) increased agricultural output. In this case, the government would be ideally placed to advocate the leasing of restituted farms to the ‘optimum farmers’. Then the beneficiaries should be guaranteed fair returns for the use of their land.

BACKGROUND ON LAND OWNERSHIP AND LAND RESTITUTION POLICY

In South Africa land ownership is protected by property rights. There are three prominent land ownership categories in the country. These are Own Land, Communal Land and Commonage Land (Grain SA, 2015).

Own land (private ownership)

Own land refers to land owned by an individual or legal person/entity, for example the government, a private company or a Trust. It is also referred to as Private Land ownership and the owner of the land has a title deed to the >>

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property. South Africa also recognises the 99-year leasehold for land.

Customary / communal / collective land

Customary land is owned by indigenous communities and administered in accordance with their customs, as opposed to statutory tenure. Customary land is common in former so-called ‘homeland’ areas, which covers about 13 per cent of South Africa which translates into about 18 million hectares.

In South Africa, traditional leaders have authority as the chief administrators of communal land for the benefit of the community. Communal land is not governed by the principle of freehold title. Instead the permit-to-occupy principle applies.

The traditional leaders (chiefs) control the land on behalf of the community and the tribal chiefs are mandated to use and manage the land on the community’s behalf and for the community’s benefit.

When an individual or legal entity wants to do business on communal land, they must approach the chief who manages the communal land with a business proposal.

Consequently, it is the traditional leader who holds the power to rule on the allocation of land for development.

Commonage land

Commonage land is farm land that is owned by a local municipality. In



South Africa, there are two different types of commonage land. The first type is that which was owned by the municipality before 1994 which can be leased to anyone. The second type is that which was purchased after 1994 which should be hired to ‘previously disadvantaged individuals (PDIs).

CURRENT LAND RESTITUTION POLICY

Land restitution in South Africa was initially governed by the Restitution of Land Rights Act (1994). This Act determines that an individual, his/her descendants or a community who was dispossessed of a right to land after 19 June 1913 as a result of past racially discriminatory laws or practices can claim for restitution of that right in land or equitable redress. According to the Act, the claim had to be lodged by the 31 December 1998.

Restitution occurred in one of the following ways:

- Transfer of the claimed land to the claimant;
- Transfer of alternative land to the claimant;
- Financial compensation or;
- A combination of the above.

A new Act was passed on 30 June, 2014 to govern land restitution that is known as the Restitution of

Land Rights Amendment Act. This Act gives land claimants a further opportunity until 30 June 2019 to lodge claims. However, the Act was declared unconstitutional by the Constitutional Court on July 2016, citing lack of consultation as the reason for the decision. Parliament was given two years to fix the Amendment.

PROGRESS AND CHALLENGES WITH LAND RESTITUTION AND POST-RESTITUTION CHALLENGES

The post-apartheid South African government pledged to redistribute 30 per cent of 82 million hectares of white-owned agricultural land to PDIs by 2014 (Binswanger-Mkhize, 2014). However, by 2012, government had managed to redistribute 7.95 million hectares, which is about one-third of the target (Kirsten, 2012). There have been complaints that the pace of land restitution is too slow with blame pointed mainly at the lack of capacity within government (Business Enterprises, 2013, 2014). In an appraisal of the land restitution policy in South Africa, Binswanger-Mkhize (2014) concludes that, in the 20 years of democracy, land restitution has failed. The appraisal was conducted with respect to the following criteria: ‘(i) the number of beneficiaries relative to rural employment and the demand

for land from beneficiaries, and (ii) increases in production, livelihoods and agricultural output.’ These criteria are based on the inclusive growth objectives of the NDP (NPC, 2011).

The phrase ‘tragedy of the commons’ became widely publicised when an article by Garrett Hardin was published in 1968 (Hardin, 1968). Ostrom (2008) explains that the tragedy of the commons:

arises when it is difficult and costly to exclude potential users from common-pool resources that yield finite flows of benefits, as a result of which those resources will be exhausted by rational, utility-maximising individuals rather than conserved for the benefit of all.

Overfishing is a frequently used illustration to depict the tragedy of the commons. In this case, one needs to imagine a situation where a group of community members have equal rights and open access to fish in a community lake with limited fish. It can be expected that the combined actions (fishing) of utility maximising individual community members acting independently according to their own self-interest will lead to overfishing. In this illustration, no one is inclined to allow the fish to replenish their numbers which would be in the interest of all community members because he/she is not sure if other community members will do the same. This leads to a situation where each individual beneficiary, acting according to their own self-interest, behaves contrary to the common good of all community members and, through their collective action, end up depleting the resource for all.

A similar situation is now evident in land restitution. Binswanger-Mkhize (2014) contends that change in the implementation of the policy is required. Hall and Cliffe (2009) are dismayed that, despite the changes to the previous land restitution policy, there has been a

reinvention of the same old ideas instead of replacing failed approaches. The change needs to be evidence-based, well-thought through, with previous challenges studied and comprehensively addressed.

POST-RESTITUTION CHALLENGES

Some of the challenges identified for the failures of restituted farms include:

- lack of commercial farming and market development skills;
- lack of capital and financial reserves to mitigate the hitches owing to drought or animal disease outbreak;
- conflict between the beneficiaries and government officials in charge of land restitution;
- conflict between the beneficiaries and the strategic partners who were to assist the beneficiaries with managing the restituted farm.

Though these reasons for failures are manageable, the most troublesome reasons for failure of restituted farms are those described by the ‘tragedy of the commons’ as well as conflict among beneficiaries. Various authors argue that group or co-operative farming with many members is prone to insurmountable difficulties due to internal conflicts among members, communities, strategic partners and with government officials (Anseeuw & Mathebula, 2008; Business Enterprises, 2014; Kirsten et al., 2014). This tends to be ubiquitous in cases where the beneficiaries are a large community. This finding is also echoed by Binswanger-Mkhize (2014) who notes that group or co-operative farming is one of the primary reasons for the poor performance of the land restitution programme. Binswanger-Mkhize (2014) observes that the few success stories are overshadowed by the many total or partial failures.

The infighting amongst beneficiaries is sometimes due to rent-seeking and at other times due to a difference in views between those in urban areas and those based in rural areas regarding the use of land. These differences can destroy even high-income farms. Conflicts with strategic partners and government officials are also not helpful but when compared to conflicts within beneficiaries they are less serious. For instance, strategic partners and/or officials can be replaced with others. However, this is not the case with beneficiaries: once there is internal strife among beneficiaries, the dispute typically becomes intractable because beneficiaries cannot be substituted. Conflict within the beneficiaries has a tendency of leading to paralysis of the restitution project.

Binswanger-Mkhize (2014) finds that few of the Mkhomali Property Associations and production co-operatives are farming successfully but at least half of the projects have not produced any benefits for the participants. Evidence from the review of land restitution projects in the North West province in 2005 and again in 2010 (Kirsten et al., 2014) suggests that smaller groups (less than five) are the most successful, but that the degree of success declines as group size increases. This evidence confirms some of the theoretical problems with group operations which led Binswanger-Mkhize (2014) to question

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this approach to the resolution of land restitution. In the face of long-standing international evidence and the poor performance of co-operative farms in the past 20 years, it is most astonishing that South Africa has clung to this model for so long.

SOME NOTABLE EXAMPLES OF RESTITUTED AGRICULTURAL FARMS

Zebediela Citrus Estate in Limpopo

One of the notable restituted farms is the Zebediela Citrus Estate in Limpopo. This farm is considered the biggest citrus estate in the southern hemisphere and one of the biggest citrus farms in the world (Ndenze, 2017). In 1978, the Reader's Digest Guide to Southern Africa boasted that Zebediela farm grew one orange for every eight people in the world. This estate was a high-revenue-generating farm. In 2015, it reported a revenue of R110 million. Unfortunately, it has become one of the major restituted farm disasters.

The farm was restituted to the Bjatladi community in September 2003. The running of the estate started well through the formation of a

partnership with existing farmers on the estate. Part of the agreement with the community and the farmers/partners was a lease agreement with an annual rental payment of R1 million to the Bjatladi Communal Property Association. However, there was a disagreement with the partners which was settled out of court and the community tried to run the farm by themselves. Poor agricultural maintenance programmes, however, resulted in outbreaks of diseases and parasites that negatively affected the quality of the fruit and compromised the lucrative export market on which Zebediela relied for a large part of its income. In 2016, the quality of the crop was below the standard required for exports and this led to litigation because the buyers had paid R67 million in advance to secure the 2016 crop. Complicating this were the continuous disputes among members of the co-operative. It is relatively easier to address agricultural maintenance programmes. However, group or co-operative farming disputes can be far more debilitating in the long term.

There is anticipation that the farm will be invigorated as a result of a R100 million cash investment from a Russian investor through a company known as Eight Mile (Hlatshaneni, 2017). The investor stepped in early in 2017 when the farm was on the brink of liquidation. This gave hope to approximately 260 permanent and 1,000 temporary employees who also share its ownership. The deal will see the land owners receiving a R2.5 million annual rental payment and a 50% profit share.

This clearly highlights the intricacies of running a farm and the benefits of leasing a restituted farm to an 'optimum farmer' with access to financial resources. If the management of the estate is left to the 'optimum farmer', failure can be averted. There was a strong possibility that the community could have lost the entire

estate if the farm was liquidated and this would have made them worse off than before as it would also translate into a loss of income for the farm workers who have co-ownership.

Mala Mala Game Reserve

Mala Mala Game Reserve is a five-star game reserve that the government bought for approximately R1.1 billion, making it the most expensive land claim thus far. In January 2014, the N'wandlamhlarhi Community Property Association (CPA) was furnished with the title deed for the land. This game reserve is considered one of South Africa's elite game lodges. A transitional agreement was reached in which the current Mala Mala operating company will continue to manage the business, while a partnership is negotiated. According to the transitional agreement, the beneficiaries receive R700,000 per month in rental fees. There was also an understanding that the partners would continue running the lodge while training and mentoring the community until they were adequately skilled to run the lodge. The community would also receive a total of R8.4m in rental from the lodge operators. Mala Mala faces similar challenges as other group or co-operative farms. If these challenges are not addressed at an early stage, it will threaten the viability of the farm. This is a high-income game reserve and the beneficiaries cannot afford to fail because this will negatively affect many beneficiaries and employees. The CPA chairperson acknowledged that they don't have the skills and the expertise to manage the farm and that it would be beneficial to lease a restituted farm to an 'optimum farmer'.

It is worth noting that the large and high-income farms contribute substantially to the economy mainly through tax revenue, and hence to society. As such, a great deal of attention should be paid to how sale

and lease agreements are structured since failure has a severe impact on employees and the economic activity in contiguous areas.

It is in light of these case studies that I argue that leasing of restituted farms should be considered as an alternative in order to achieve the growth objectives of the NDP. For instance, the beneficiaries of restituted farms could lease the land to the ‘optimum farmer’ and earn rent or could share from the profits derived from the use of their land. In essence, I argue that the ownership and the use of a resource should be viewed as distinct issues. This distinction is the basis of the resource allocation concept of ‘Optimal Value Creation’ (OVC). OVC means that a resource is better allocated to the ‘optimum user’ in order to create optimal value and this will provide the optimal benefit to the resource owner, the ‘optimum user’ of the resource and the society at large. It follows that the resource owners should be fairly compensated for its use.

Unskilled farmers do not imply that a group of individuals are not skilled in other areas. For example, some members of the group could be highly skilled in other operational areas but not in the management of a commercial farm. Leasing the land to a ‘highly skilled farmer’ is the best resource allocation for the beneficiaries, the ‘highly skilled farmer’ and, ultimately, the entire society/country, as it also translates to higher tax collection for the state and higher food production which means lower food prices and improved food security. In a case where beneficiaries want to use the land as collateral, the value of the land will be higher if it is leased to a highly skilled farmer. However, if the beneficiaries wish to use the land as collateral for debt, it is advisable that they should subdivide the land into portions and use a portion of the land as security, to avoid the risk of

losing their entire land holding. This simple analysis brings to the forefront the importance of using OVC in the country’s land restitution policy. Leasing the land to a ‘highly skilled farmer’ in the case of a successful land claim is the best resource allocation option. It also saves the beneficiaries from raising the capital required to successfully run a commercial farm.

Even in cases where the successful land claimants are ‘highly skilled farmers’ with resources to run a commercial farm, it would still be better for them to lease the farm to another ‘highly skilled farmer’ to avoid the pitfalls I sketched above.

POLICY RECOMMENDATION AND SOME PRACTICAL POST-RESTITUTION IDEAS

The failures of commercial farms post-restitution warrants a radical re-think of land restitution policy in South Africa. There is the danger that farm workers and communities in close proximity to failed restituted farms might be left worse off in a post-restitution stage than prior to restitution. Binswanger-Mkhize (2014) is also of the view that the programme “should be based primarily on family farmer models from supplementary food production to small, commercially oriented family farms”. Although this would contribute to solving the complications prevalent in group or community cooperatives, the challenge is that this route is unlikely to lead to viable commercial farming. This is because South African farming is highly competitive and has to contend with very low margins at the farm gate (Phillip, 2011).

Accordingly, large commercial farmers who enjoy economies of scale have an advantage. Economies of scale are key to successful farming in South Africa. The inability of emerging farmers to achieve economies of scale does not only adversely affect them, but also those established farmers who



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are not large enough to achieve such economies of scale for profitability. The farming industry is not as easy as it might seem and this can be seen in the reduction of the number of dairy farmers from more than 7,000 in 2005 to about 2,100 in 2013 (Nevin, 2013). The main reason behind this is low farm-gate prices which make dairy farming unsustainable. Another reason, as noted by Manonga (2015), is that “South African producers have to compete with international producers who are highly mechanised and subsidised and who practice precision farming”. A clear illustration of this is the importing of chickens in 2017 and the devastating effect it had on local chicken farmers. As such, the main policy recommendation is that OVC should be at the forefront of changes ►►

in the land reform programme and the state is well placed to be an advocate for the concept of OVC.

PRACTICAL POST-RESTITUTION RECOMMENDATIONS: AN APPLICATION OF OVC

This section provides some practical post-restitution recommendations by applying the concept of OVC. Land restitution can incorporate OVC as follows:

The beneficiaries could lease the land to an 'optimum farmer' and earn rent only

The advantage with leasing for rent only is that the income does not depend on the performance of the business and this comes with more certainty. This might work best where profits fluctuate. Thus, even if the farm made a loss in one period, the land owners will still earn rental income.

The beneficiaries could lease the land and opt to earn a portion of the profits only from the use of the land

This basically entails the leased farm being established as a corporation with all the members of the community as shareholders. This system has worked in the corporate world and the practice is expected to continue in the foreseeable future. The principles could easily be applied in the land restitution programme. This will work best in cases where the farm is highly profitable. In order to address the principal agent problem, the land owners could link the remuneration of the optimum farmer to the performance of the farm. For example, they can offer a performance bonus, some shares to the 'optimum farmer' and/or a long-term employment contract. Given that the Zebediela citrus farm and Mala Mala game reserve mentioned above are high-income generating projects, they could be run

like a corporation where beneficiaries are shareholders.

The beneficiaries could opt to earn both rental income and share in the profits

In this case, the rent would be less than in point (i) above and the profit will be less than in point (ii) above.

A case of beneficiaries who accidentally applied OVC when they came close to a disaster.

The case of the Moletele community

The Moletele community were the restitution beneficiaries of about 70 000 hectares in 2007 (Van der Walt, 2018). They came close to a catastrophe after they took over the 70 000 hectares as they struggled to pay for inputs such as fertiliser and electricity so they advertised and searched for people who could successfully run the farm. Their call was answered by locally established 'highly skilled farmers'. This resulted in a lease agreement in 2012 between Bosveld Citrus, a member of the Komati Fruit Group ('Komati') and the Moletele Communal Property Association (CPA) of the farm, in the name of Richmond Kopano. The lease agreement was designed to ensure that both the beneficiaries and Komati benefitted. The agreement included a high level of transparency and full access by beneficiaries to the financial statements of their farm. On signing the agreement, Komati furnished the Moletele CPA with a comprehensive business plan for the development of the farm. This suggests that the beneficiaries were also careful in selecting the leaseholder, a lesson that other CPAs should follow, namely, ensuring that the lessee is transparent and offers a comprehensive business plan on how their farm will be managed.

The Moleteles' venture has since benefited from their partner's adeptness as well as their processing facilities and their extensive distribution networks.



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The beneficiaries receive a share of the turnover and also benefit from Komati's economy of scale. Komati is responsible for inputs, administration costs, transport, logistics and marketing. This partnership has helped the Moletele CPA address a crucial element of successful commercial farming: economies of scale. The Board members of the Moletele CPA have their own careers and attended to CPA matters after hours and this shows that the beneficiaries could be skilled in other fields and not necessarily in commercial farming. Other community members also benefit from preferential employment since citrus farming is a labour-intensive venture. The farm currently employs 116 permanent and about 400 seasonal workers. This partnership also contributes to community development through the provision of an internship programme for prospective farmers and scholarships. It contributed to the success of the Moletele CPA which received the Vumelana Governance Award in 2014 (a prize of R300,000), for being the best-run CPA in the country. Most of the fruit is exported while the rest is delivered to processors for juicing or sold locally. The collaboration has aided this black-led enterprise to report its first profits.

This is a clear illustration of successful implementation of OVC.

This success suggests that allocating the use of land to the 'optimum farmer' is the best resource allocation for both the land owner and the 'optimum farmer'. In fact, allocating the use of land to large commercial farming companies who enjoy economies of scale might be the best option in the long term for beneficiaries. This is because large farming companies are sustainable and are able to face international competition. Binswanger-Mkhize (2014) observes that:

Large commercial farms are a very successful model around the world, and are well placed to contribute to agricultural growth. It is also the model of the large-scale commercial farming sector in South Africa, which has been a high-performing sector for the past 20 years, even though all programmes and policies that provided it with special benefits have been abolished (2014, 265).

It is also worth mentioning that instead of selling a restituted farm, leasing it might be the best option in the long run for the beneficiaries, since land is a treasured immovable asset and one that generates perpetual income. Asset or land ownership by marginalised communities is key to the broad-based transformation programme of the South African government. Communities need to be persuaded not to sell restituted farms. Rather, lease them as this could help the country to reduce the high levels of inequality.

CONCLUSION

Land restitution is an accepted part of post-apartheid South African government policy. It is aimed at addressing past land dispossession. Thus far, land restitution in the

agricultural industry has not achieved the inclusive growth objectives of the NDP which includes (1) increased and sustainable livelihood for its beneficiaries, in particular, those from poor communities and (2) increased agricultural output. Hence, the leasing of restituted farms should be considered an alternative in order to achieve these objectives. The lease agreement should attest that the beneficiaries will be rewarded fairly for the use of their land. This will benefit both the owner of the land and the 'optimum farmer' and the society at large in terms of increased production, increased contribution to tax and food security. I argue that this requires making OVC an essential pillar of land restitution policies in South Africa. OVC also leads to the desirable levels of efficient use of land. Since economies of scale are key to successful farming in South Africa, it is imperative that beneficiaries select a lessee who knows how to achieve economies of scale. The beneficiaries also need to ensure that transparency is central to the agreement and that their lessee provides them with a detailed and comprehensive business plan of how their farm will be run to ensure its success.

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ENDNOTES

- 1 This paper was presented at the Colloquium on Land and Property in a Contested Terrain, held at the University of Witwatersrand on the 02 July 2018.
- 2 'Optimum farmer' refers to a 'highly skilled commercial farmer'. **NA**