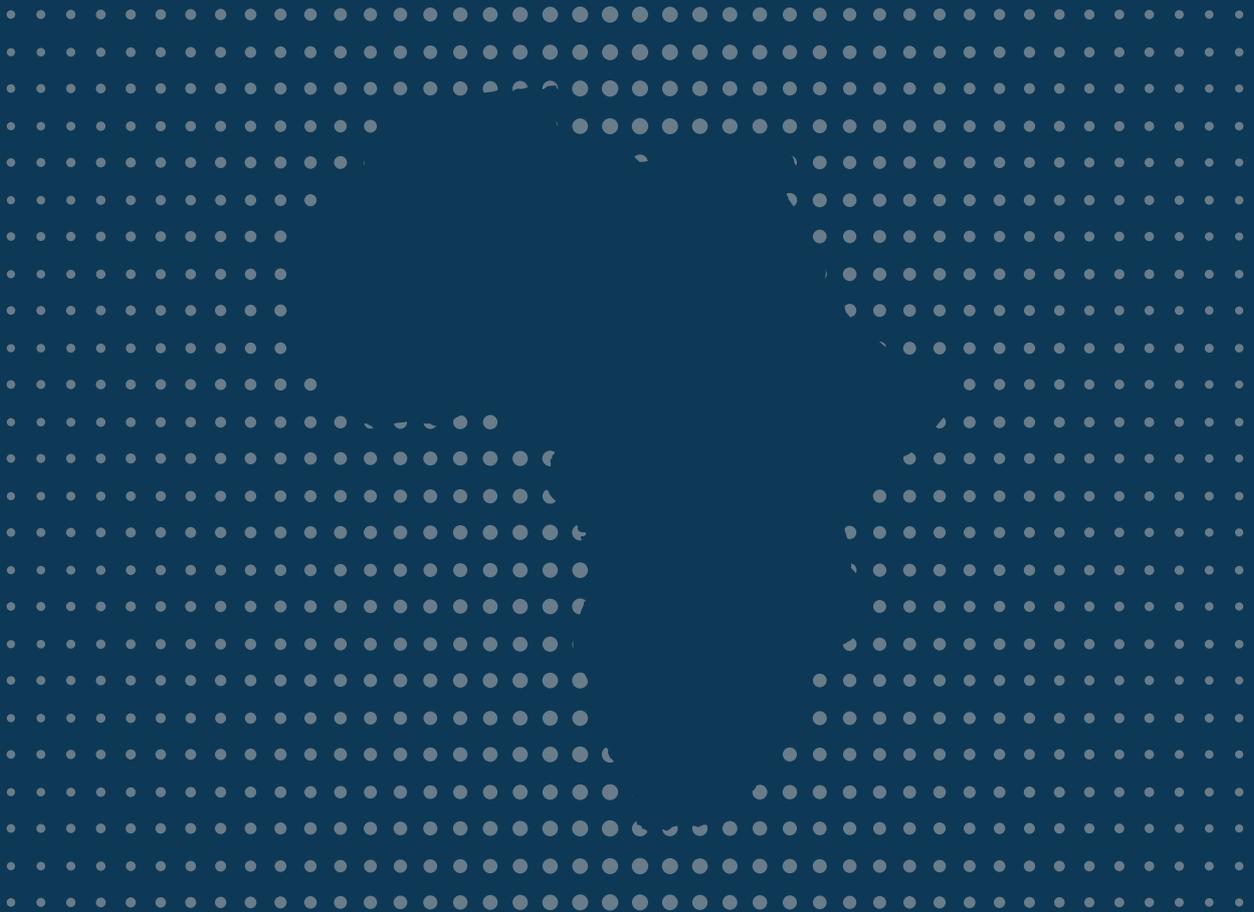




RECONCILIATION & DEVELOPMENT

WORKING PAPER SERIES | PAPER 5

South Africans' views on land reform: Evidence from the South African Reconciliation Barometer



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By Mikhail Moosa

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The Reconciliation and Development series is a multidisciplinary publication focused on the themes of peacebuilding and development. Peacebuilding research includes the study of causes of armed violence and war, processes of conflict, the preconditions for peaceful resolution and peacebuilding, and the processes and nature of social cohesion and reconciliation. Development research, in turn, is concerned with poverty, structural inequalities, reasons for underdevelopment, issues of socio-economic justice and the nature of inclusive development. This publication serves to build up a knowledge base of research topics in the fields of peacebuilding and development, and the nexus between them, studying the relationship between conflict and poverty, and exclusion and inequality, as well as between peace and development in positive terms.

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The South African Reconciliation Barometer (SARB) is a public opinion survey conducted by the IJR. Since its launch in 2003, the SARB has provided a nationally representative measure of citizens' attitudes to national reconciliation, social cohesion, transformation and democratic governance. The SARB is the only survey dedicated to critical measurement of reconciliation and the broader processes of social cohesion, and is the largest longitudinal data source of its kind globally.

Published by the Institute for Justice and Reconciliation
105 Hatfield Street, Gardens, Cape Town, 8001, South Africa
www.ijr.org.za

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Designed and produced by COMPRESS.dsl | www.compressdsl.com

Orders to be placed with the IJR:
Tel: +27 (21) 202 4071
Email: info@ijr.org.za

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Acronyms

ANC	African National Congress
DA	Democratic Alliance
DRDLR	Department of Rural Development and Land Reform
EFF	Economic Freedom Fighters
HLPR	High Level Panel Report
IJR	Institute for Justice and Reconciliation
NP	National Party
SARB	South African Reconciliation Barometer
SONA	State of the Nation Address
TRC	Truth and Reconciliation Commission
UN	United Nations

Background

Perhaps for the first time in post-apartheid South Africa, the 'land question' has recently been given the prominence it deserves. More specifically, the principle of 'expropriation of land without compensation' has triggered a renewed interest in addressing issues of land reform, restitution and, more broadly, inequality and historical dispossession.

The most definitive sign of political will to re-engage with accelerating land reform came when South Africa's National Assembly adopted a motion by the Economic Freedom Fighters (EFF), the country's second-largest opposition party and a party with a Marxian orientation, with minor revisions from the long-running governing party, the African National Congress (ANC). The EFF's motion proposed that Parliament task the Constitution Review Committee to determine whether Section 25 in the Bill of Rights of the Constitution, the so-called Property Clause, needed to be amended in order for 'expropriation without compensation' to take place.¹ Essentially, both the EFF and the ANC agreed that, in order to accelerate redistribution, land should be expropriated by the state for little to no compensation, and the Review Committee was tasked with determining whether the Constitution would be a legal barrier to such a policy. The deadline for the Committee's findings is 30 August 2018.

The official opposition, the liberal Democratic Alliance (DA), voted against the parliamentary motion. The party claims that expropriation without compensation would be dangerous to the national economy and food security, while emphasising the ANC's inability to deliver land reform within the current constitutional framework.² Moreover, the 'Afrikaner-rights' organisation AfriForum has decried the decision and embarked on an international campaign to raise awareness of 'farm murders and expropriation without compensation'.³

The policy of expropriation without compensation was officially adopted by the ANC at its 54th National Conference in December 2017.⁴ In his first address as state president after being elected ANC president at the party's conference, Cyril Ramaphosa outlined his vision for land reform in 2018:

We will accelerate our land redistribution programme not only to redress a grave historical injustice, but also to bring more producers into the agricultural sector and to make more land available for cultivation ... this approach will include the expropriation of land without compensation. We are determined that expropriation without compensation should be implemented

in a way that increases agricultural production, improves food security and ensure[s] that the land is returned to those from whom it was taken under colonialism and apartheid.⁵ [Emphasis added]

However, prior to the ANC's National Conference in December 2017, there were signs that a greater emphasis on land reform was emerging among the political elite. The rhetoric of the EFF since its formation in 2013 has centred on 'radical' attempts to restructure and alter the nature of South Africa's economy, including policy proposals for the nationalisation of banks, key industries (e.g. mines) and all land in the country.⁶

A year before President Ramaphosa's State of the Nation Address (SONA), in his final SONA, former president Jacob Zuma claimed that 'it will be difficult if not impossible to achieve true reconciliation until the land question is resolved'.⁷ In another address to the National House of Traditional Leaders, Zuma also claimed that legislative reform was imminent and used the Constitution as a scapegoat to explain the slow pace of land reform under the ANC.⁸

Questions concerning land reform, restitution and tenure security, then, are not necessarily new issues in South Africa.

Questions concerning land reform, restitution and tenure security, then, are not necessarily new issues in South Africa. More recently, however, the rhetoric lamenting the relatively slow pace and unsuccessful nature of land reform has emanated from both 'radical' opposition parties and the national executive. As a result of Parliament's decision to conduct a review of the Constitution in order to allow for an accelerated land redistribution programme, several questions are worth posing:

1. Why has land reform recently emerged as a major political and social issue?
2. Why, after over two decades of democratic government, has the 'land question' not been resolved?
3. What do South Africans think about land reform in terms of its social and public benefit?
4. What do South Africans think of their current land and property rights?

Using recent and repeated cross-sectional data from the South African Reconciliation Barometer (SARB), the regular, nationwide public-opinion survey from the Institute for Justice and Reconciliation (IJR), this paper attempts to shed light on South Africans' views on land reform and provide some answers to the above questions. Although several experts have argued that a constitutional amendment is not necessary to implement land expropriation without compensation,⁹ the purpose of this paper is to explore South Africans' views on land reform, in order to determine whether there is a democratic mandate for accelerated land redistribution.

Outline

This paper has four sections to address the four guiding questions. Firstly, a brief historical overview of land dispossession is provided. This introductory section is necessary to foreground the dynamics of land ownership in contemporary South Africa and explain the salience of land reform in the proceeding sections.

The second section explores post-apartheid policies on land reform and why these policies, seemingly by the ANC's own admission, have failed to bring about sufficient change in land use in South Africa. This section foregrounds the failure of government to adequately address the inequality created under apartheid and colonialism.

Using SARB data, the third section reflects on public opinion concerning three issues from the land debate: (i) apartheid's legacy of dispossession and segregation; (ii) the need for land reform to address inequality and further the reconciliation process; and (iii) determining which land should be redistributed. This section aims to show South Africans' concerns and agreement about issues of land reform.

The fourth section, using data from the 2005–2011 SARB surveys, evaluates whether South Africans believe their land, properties, or homes will be taken away; in other words, do South Africans believe they have secure tenure? The data is disaggregated by province and race, to explore which provinces and population groups are most tenure insecure.

Finally, this paper concludes by arguing that substantive and effective land reform is long overdue in post-apartheid South Africa for political, economic and social reasons. Importantly, *most South Africans agree that land reform is important to addressing inequality and furthering reconciliation in South Africa*. Therefore, the renewed emphasis on land reform should not be seen exclusively as 'fascist' politicking.¹⁰ Although public opinion from the SARB surveys does not disclose participants' views on expropriation without compensation, the data reveals that South Africans believe land reform is an intrinsic part of the post-apartheid historical justice project and appears to have the support of most South Africans.

1 Land dispossession in South Africa

'Awaking on Friday morning, June 20, 1913, the South African Native found himself, not actually a slave, but a pariah in the land of his birth.'¹¹ Reflecting on the Natives Land Act of 1913, Sol Plaatje, one of South Africa's greatest authors and activists, encapsulated the feeling of immense dispossession. The Act, which would later become known simply as the Land Act, limited native ownership to just 7 per cent of all land in the country. Despite White settlers constituting only a small minority of the population, they had effective control over 93 per cent of land in South Africa.¹²

Dispossession of land in South Africa predates the Land Act by several centuries. However, the Land Act, and the Glen Grey Act (1894) before it, marked the first major legislation which legitimised and authorised vastly disproportionate ownership of land.¹³ Although the creation of the Union of South Africa in 1910 formally established an end to British colonial rule over the territory of South Africa, the new state served to continue and, in many instances such as the Land Act, exacerbate the dispossession and underdevelopment of Black South Africans.¹⁴ In short,

the Act [of Union] entrenched the privileges of Whites who secured a virtual monopoly of electoral power ... The state carefully managed the influx of African labour, using already embedded practices and ideologies. Britain's High Commissioner, Milner, viewed native reserves, urban 'influx control', and the manipulation of chiefs as necessary instruments to keep Africans in check in any sophisticated colonial economy ... This period of South African history laid the economic, political and institutional foundations of the segregation and apartheid that were to follow.¹⁵

When the National Party (NP) was elected in 1948, its various policy programmes, which would later be known as the stages of apartheid,¹⁶ sought to reinforce and update many instances of colonial-era legislation, including from 1910, when the Union of South Africa was established.¹⁷ The apartheid state introduced several pieces of legislation to restrict the freedoms of movement and occupation of Black South Africans, as well as to facilitate the creation of 'ethnic homelands', known as Bantustans, for Africans.

Black Africans were forced to live either in townships near urban areas, with almost no long-term legal protection over their properties, or in Bantustans, where 'traditional' authorities governing with the acquiescence of the NP possessed extraordinary powers over land. In short, over the colonial history of South Africa, including the apartheid years under the NP, 'the legacy of past land tenure policies has been to trap Black South Africans in a state of pervasive tenure insecurity'.¹⁸

2 Post-apartheid land reform

This section explores several instances of post-apartheid land reform, paying particular attention to two major themes: (i) land reform policies of the 1990s and (ii) the efficacy of state policy. It is important to explore how the post-apartheid government has enacted various forms of legislation in order to establish the context of present discussions on land reform.

2.1 Land reform policies of the 1990s

When the ANC was democratically elected into power in 1994, it faced myriad challenges. In particular, it became clear that 'a democratic government would have to address the exclusion of most Black South Africans from [the] system of private property',¹⁹ a system of 'polarisation between a sophisticated system

of individual private property ownership and poorly recognised extra-legal tenures'.²⁰ Essentially, in the immediate post-apartheid era, White South Africans possessed secure individual tenure and title to their properties, while Black South Africans, especially those in the former Bantustan areas, had insecure rights to land.

The argument for land reform that has seemingly dominated state policy emphasises the socio-economic benefit of reform processes, and is best articulated by the Department of Land Affairs' *White Paper on South African Land Policy*:

*Redistributive land reform cannot in itself ensure national economic development, but it is a necessary condition for a more secure and balanced civil society. It is an essential precondition for the success of government's growth, employment and redistribution strategy. In contributing to conditions of stability and certainty, land reform is a necessary element of sustainable growth.*²¹

The state envisioned that land reform processes would form part of establishing the preconditions for sustainable and equitable economic growth. Land is portrayed as more than simply a cultural asset with historical value, but as an asset which forms the foundation of economic development.²² The state's logic of 'land as economic asset' impacted its means of redressing historical processes of land dispossessions. As outlined in the White Paper, state policy was not radical (or in line with the earlier ANC positions),²³ but conformed to liberal market imperatives:

'Redistributive land reform cannot in itself ensure national economic development, but it is a necessary condition for a more secure and balanced civil society.'

*The government is committed to a land reform programme that will take place on a willing-seller willing-buyer basis. Rather than become directly involved in land purchase for the land redistribution programme, government will provide grants and services to assist the needy with the purchase of land.*²⁴ [Emphasis added]

In short, the immediate post-apartheid land policy did not envision the principle of 'willing-buyer, willing-seller' as being an obstacle to effective land redistribution. In reality, however, the efficacy of the state's land redistribution policy has been widely discredited.

2.2 The present state of land reform

An extensive report by the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change outlines the abysmal rate of post-apartheid land reform. Tasked with evaluating state policy and its ability to fulfil delivery targets, and making recommendations to improve state capacity, the High Level Panel Report (HLPR), chaired by former president Kgalema Motlanthe, summarised the state's legacy on land reform as follows:

There are still 7 000 unsettled, and more than 19 000 unfinalised, 'old order' claims (claims lodged before the initial cut-off date of

1998). At the present rate of finalising 560 claims a year, it will take at least 35 years to finalise all old order claims; new order claims (lodged in terms of the now repealed Restitution of Land Rights Amendment Act of 2014) that have already been lodged will take 143 years to settle; and if land claims are reopened and the expected 397 000 claims are lodged, it will take 709 years to complete Land Restitution.²⁵

Essentially, the state's current policy on land reform, and the way in which it is implemented, is inefficient and unsustainable. Moreover, the Land Claims Commission, an institution established with the specific responsibility to manage claims on land and facilitate the redistribution process, has functioned ineffectually. The HLPB notes:

Implementation has been poor at every level. While the budget has been criticised for not being high enough to cover the costs of restitution (for example purchasing land required) the Commission has consistently underspent the budget, suggesting that the fundamental problems lie with capacity and systems. Choices around spending have been poor. There has been political meddling in land restitution, both in terms of unreasonable targets for redistribution, as well as in terms of individual restitution awards, which has damaged the integrity of the process.²⁶

Compounding the inefficiency of state institutions to carry out their mandate, present discussions on land reform are 'clouded by misrepresentation and lack of data'.

Compounding the inefficiency of state institutions to carry out their mandate, present discussions on land reform are 'clouded by misrepresentation and lack of data'.²⁷ The state's first attempt at a national audit of land holdings was only published in 2013, which outlined the type of ownership (e.g. state-owned, private, commercial),²⁸ and a follow-up released in 2018, which aimed to disaggregate land holdings by race, gender and nationality.²⁹ However, these audits, while a necessary step towards understanding the complexities of land ownership in South Africa, were deeply flawed.

In short, the state's audits make it clear that 'apartheid patterns of land ownership remain largely intact', but that 'at the same time, nobody knows who owns what land in South Africa'.³⁰ The 2013 audit was 'inaccurate and incomplete', while the 2018 audit 'could only identify ownership of 31 per cent of land', as data on nationality, race and gender is not readily available for private property.³¹

In order for the state to implement an effective and equitable policy of land redistribution in South Africa, it needs to review the efficacy of its current policies, take the issue of restitution seriously by providing adequate resources and funds to the relevant institutions, and properly utilise its powers of expropriation and redistribution. The next section will explore whether South Africans would support such reforms.

3 Public opinion on land reform

This section attempts to answer three salient questions regarding public opinion on land reform, using data from the 2017 SARB survey. Firstly, do South Africans agree that colonialism and apartheid produced immense imbalances in society, and that these imbalances need to be addressed? Secondly, do South Africans believe that land reform is important for addressing inequality or furthering reconciliation, and which land should be redistributed? Finally, if accelerated land reform processes were to be implemented, which land should be redistributed?

3.1 Public opinion on the legacy of apartheid on land and property

After the Sharpeville Massacre in 1960, international condemnation of the NP's policy of apartheid increased substantially. In 1966, the United Nations (UN) General Assembly labelled apartheid as a crime against humanity, and the UN Security Council endorsed this decision in 1984.³² After the end of apartheid in the 1990s, and subsequent reconciliation processes such as the Truth and Reconciliation Commission (TRC), there was a general understanding that apartheid was, indeed, a crime against humanity.

However, 23 years after the first democratic elections in South Africa, the 2017 SARB survey reveals that, while there is strong agreement (75 per cent) that apartheid was a crime against humanity, some South Africans (16 per cent) still hold 'neutral' opinions, while a small minority (6 per cent) disagree with the statement (Figure 1).³³ While this question has been asked in every survey since the SARB's inception in 2003, the data reveals declining agreement on the statement, and that White people are consistently less likely to agree than other population groups.³⁴

Figure 1: Perceptions regarding the legacy of apartheid (SARB, 2017)³⁵

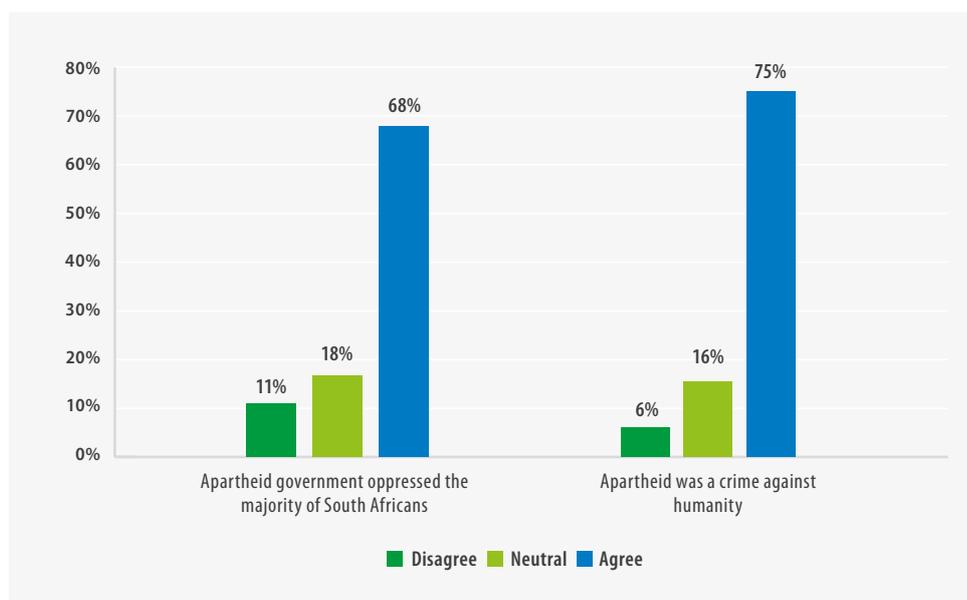


Figure 1 also reveals that most South Africans agree that the majority of people were oppressed under apartheid. However, there is greater disagreement with this statement than with the other. Overall, Figure 1 demonstrates that a majority of South Africans agree that apartheid was both a ‘crime against humanity’ (75 per cent) and a system which ‘oppressed the majority of South Africans’ (68 per cent). In order to establish whether South Africans agree on the need for land reform and what form this should take, it is necessary to evaluate public opinion on specific legacies of apartheid.

Due to apartheid’s overtly racialised structure, its effects and legacy must be considered through its disproportionate effects on different race groups. As outlined in Section 1, one of apartheid’s most enduring and substantive legacies is the effect it had on racialising property and land ownership, as well as its developing different systems of tenure rights for different race groups. While experts believe that land reform processes have been underwhelming in transforming the landscape of property ownership in post-apartheid South Africa (see Section 2.2), it is worth considering whether South Africans believe there have been substantive reforms.

Asked to consider the racialised legacy of land and property ownership in South Africa, a majority of respondents to the 2017 SARB survey agreed that little transformation has taken place. As Figure 2 shows, more than two in three (68–69 per cent of) South Africans agree that ‘Black South Africans were deprived of land and property ownership’ under apartheid, ‘many Black South Africans do not own land/property because of the lasting effects of apartheid’, and ‘many White South Africans today own land/property because of the lasting effects of apartheid’.

Figure 2: Perceptions regarding apartheid’s legacy on land and property relations (SARB, 2017)³⁶

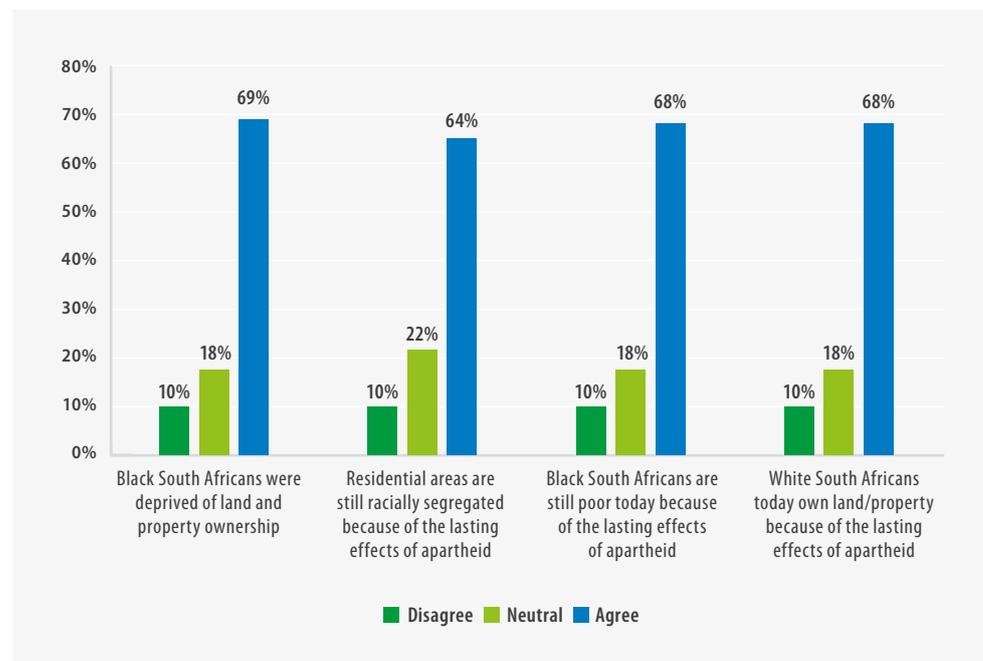


Figure 2 shows slightly less agreement (64 per cent) among respondents when asked about the continued racial segregation of residential areas, although this question elicited a higher ‘neutral’ response (22 per cent) rather than higher disagreement (10 per cent). In short, the majority of South Africans agree that land and property relations in post-apartheid South Africa still reflect the legacy of apartheid, while only one in ten (10 per cent) disagree with any of these statements.

3.2 Public opinion on land reform

Having established that most South Africans believe racial legacies continue to determine land and property relations, do South Africans believe land reform is important for historical redress? The 2017 SARB survey was the first round of surveys to probe respondents’ attitudes towards land reform. Importantly, the SARB survey asked two questions regarding land reform: (i) ‘Do you think land reform is important to address inequality in South Africa?’ (Figure 3) and (ii) ‘Do you think land reform is important for the reconciliation process in South Africa?’ (Figure 4).

Cross-sectional data from 2003–2017 in the SARB surveys consistently reveal that South Africans are most likely to identify ‘inequality’, phrased as the gap between rich and poor, as the biggest division in society.³⁷ With this in mind, the 2017 SARB survey asked South Africans whether land reform would be important to address inequality, thereby combatting the greatest division in society.

Figure 3: Perceived importance of land reform as a means to address inequality, by race (SARB, 2017)³⁸

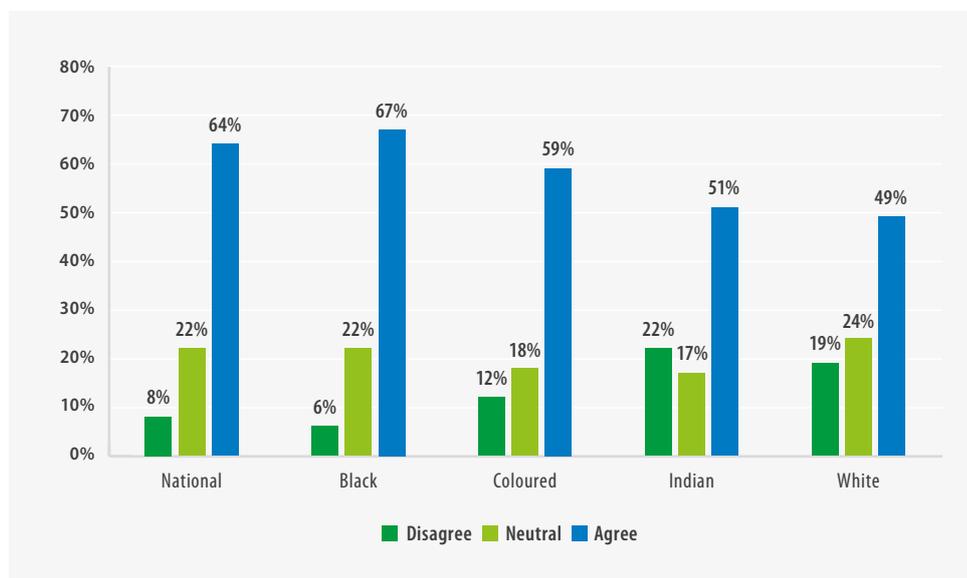


Figure 3 demonstrates that most South Africans (64 per cent) think land reform is important to address inequality in South Africa. As Figure 2 suggests, South Africans agree that the legacy of apartheid is still manifest in land and property relations, and respondents agree that reforming land and property ownership is an effective means of redressing the inequality perpetuated under apartheid.

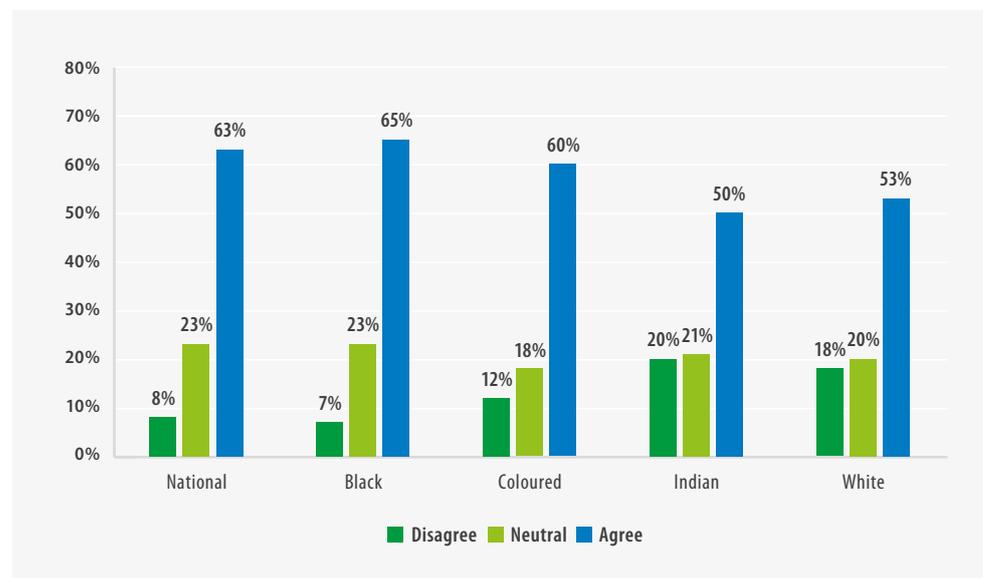
Greater redistribution of wealth, primarily assets such as land, is seen as an effective means of addressing inequality. Responding to a question as to how South Africa could address its stubborn inequality, economist Thomas Piketty claimed:

'Many successful development experiences in Europe and also in Asia did at some point in their trajectory use land reform and other forms of direct redistribution of property much more than South Africa did ... that explains why the legacy of apartheid is still very much there in terms of inequality'.³⁹

However, Figure 3 also reveals that only 49 per cent of White and 51 per cent of Indian respondents agree that land reform is important to address inequality, the lowest responses of all population groups.⁴⁰ While Figure 3 shows strong agreement that land reform is important to address inequality in South Africa, some groups are more anxious about what land reform might bring about.⁴¹

Figure 4 reveals similar trends to those observed in Figure 3. Considering that 'inequality' is seen as the greatest division in society and an obstacle to reconciliation, it is likely that respondents viewed 'addressing inequality' (Figure 3) as similar to furthering 'reconciliation' (Figure 4).

Figure 4: Perceived importance of land reform as part of the reconciliation process, by race (SARB, 2017)⁴²

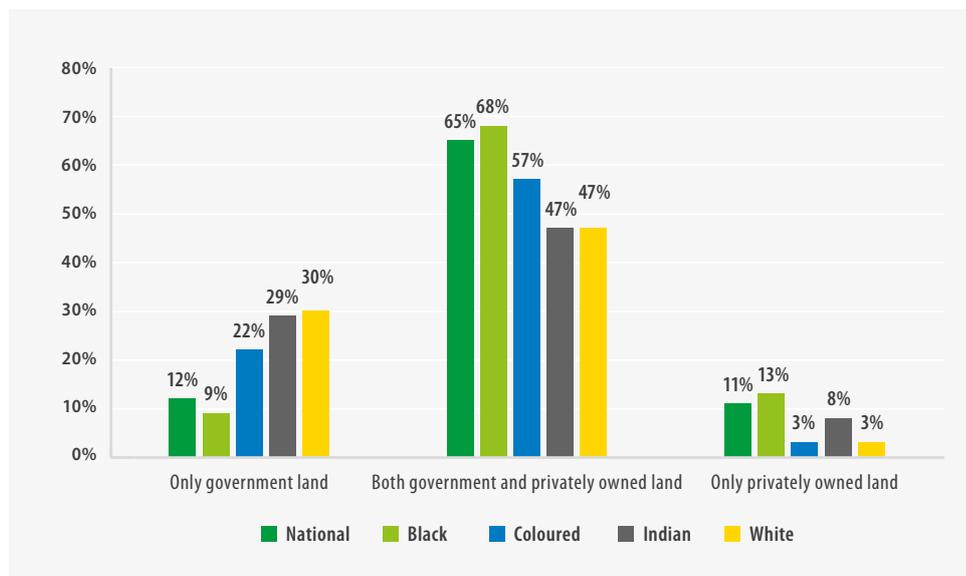


An important difference between Figures 3 and 4 relates to the agreement among minority groups. In Figure 4, more than half of White respondents (53 per cent) agree that land reform is important for reconciliation, compared to less than half (49 per cent) of White respondents agreeing on land reform's role in addressing inequality (Figure 3). Indian respondents in Figure 4 also demonstrated less disagreement (20 per cent) than in Figure 3 (22 per cent).

Overall, and contrary to some alarmist responses to recent events,⁴³ the SARB 2017 survey reveals that most South Africans agree that land reform has an important role to play in post-apartheid South Africa. Unlike other opinion surveys, which do not directly ask about South Africans' attitudes to land reform but rather deduce its importance from a general question about problems in the country,⁴⁴ the SARB findings suggest that, when South Africans are asked about land reform, there is popular support for land reform as a means of addressing inequality and furthering reconciliation.

To probe respondents' opinions further, the 2017 SARB survey also asked which land should be redistributed (Figure 5). Much of the anxiety about land reform has centred on people's fear that their personal property (i.e. home or farm) will be taken away.⁴⁵ However, the HLPR proposed that the state play a greater role in administering land in 'traditional' areas, land that is owned by the state but administered by 'traditional' authorities (specifically the Ingonyama Trust in KwaZulu-Natal).⁴⁶ In short, although some private citizens fear that expropriation will lead to their homes being taken away, major policy proposals have actually suggested that the state redistribute and reform ownership rights on state-owned land.

Figure 5: Perception of land that should be reformed, by race (SARB, 2017)⁴⁷



As Figure 5 reveals, only about one in ten South Africans believes that 'only government land' (12 per cent) or 'only privately owned land' (11 per cent) should be redistributed. Similarly to Figures 3 and 4, most South Africans are in agreement about which land should be redistributed: 'both government and privately owned land' (65 per cent). However, 30 per cent of White South Africans agree that 'only government land' should be redistributed, three times the percentage of agreement among Black respondents (9 per cent) and more than twice the national agreement. In contrast, only 3 per cent of White (and Coloured) respondents agreed that 'only privately owned land' should be redistributed,

compared to 13 per cent of Black respondents and 11 per cent of the national opinion.

Overall, South Africans agree that land reform is an important means of addressing inequality, as ‘the greatest division’ in society, and of furthering reconciliation in post-apartheid South Africa. Despite lower levels of agreement among White and Indian respondents, the two population groups that possess the greatest wealth, there is still considerable agreement that land reform is a necessary process.

4 Perceptions of tenure security

This section aims to explore South Africans’ perception of land and property tenure security. In other words, do South Africans feel secure in their land and property rights, and that these rights are not vulnerable to abuse? Unfortunately, questions relating to tenure security were only included in the 2005–2011 SARB surveys, but this data still provides valuable insight into South Africans’ perceptions of tenure security. Firstly, this section provides a brief overview of ‘the dynamics of tenure rights’ in South Africa, and secondly, it explores public opinion on whether respondents fear losing their land or property.

Many academic studies have shown that what was understood as the power of ‘traditional leaders’ was in fact a warped perception of pre-colonial societies and, in some instances, the ‘customary’ power of chiefs was severely distorted to suit the apartheid state’s needs.

4.1 The dynamics of tenure rights

Under apartheid, specifically since the Bantu Authorities Act 68 of 1951, Black people were confined to ‘ethnic homelands’ or ‘Bantustans’, where ‘traditional leaders’ exercised sovereign power over many aspects of social and political life.⁴⁸ Many academic studies have shown that what was understood as the power of ‘traditional leaders’ was in fact a warped perception of pre-colonial societies and, in some instances, the ‘customary’ power of chiefs was severely distorted to suit the apartheid state’s needs.⁴⁹ Mahmood Mamdani has referred to this distortion as ‘decentralised despotism’ where, in order to manage an ethnically exclusive authoritarian state efficiently, the apartheid regime manufactured despotic rule in the Bantustans to decentralise its authoritarian power.⁵⁰

In post-apartheid South Africa, when the former Bantustan areas were integrated into the rest of the country, many ‘traditional’ authorities retained their powers of administration over land. The disjuncture between formal, legislative and (importantly) individual property rights, as outlined by the Constitution, and informal, ‘traditional’ and communal property rights, as they exist in many rural areas, presents a significant challenge in ensuring equitable access to land and property.⁵¹ On one hand, the Constitution provides significant protections to properties registered by individuals, demarcated by the surveyor-general, and registered with the deeds registry. On the other hand, properties that are occupied communally, with no registered boundaries, and administered by ‘traditional’ authorities, are given significantly less protection by property laws. Essentially,

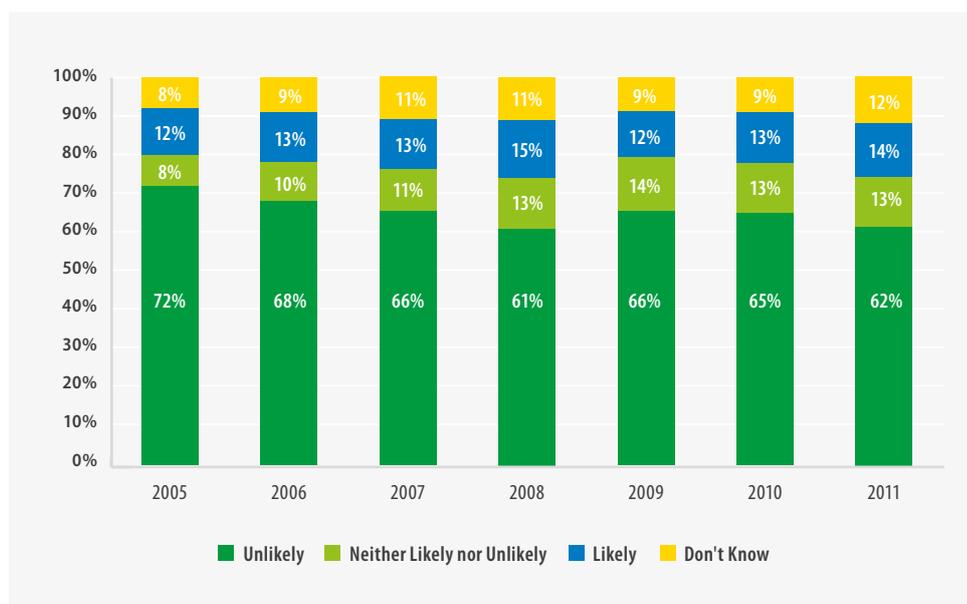
‘the institutions that uphold registered property rights, and the way in which they link to one another, are part of a structure that excludes the poor’.⁵²

4.2 Perceptions of tenure (in)security

Given the dynamics of tenure insecurity in South Africa, one might expect that South Africans living in the former Bantustan areas, mostly in present-day KwaZulu-Natal and the Eastern Cape, would exhibit the highest fear of property rights violations. However, it is important to establish the national perception first. From 2005 to 2011, the SARB survey asked respondents: ‘How likely is it that your house, property or land rights will be taken away from you during the next 12 months?’ Figure 6 shows the national results over the years.

Figure 6 reveals that most South Africans in 2011 (62 per cent) believed it is ‘unlikely’ their property or land would be taken away in the following year. Although there is no observable trend in changing opinion, in 2011, only 62 per cent of South Africans claimed it was unlikely their properties would be taken away, compared with 72 per cent in 2005 – a 10 per cent decrease.

Figure 6: Perceived likelihood of losing land, house or property (SARB 2005–2011)⁵³



However, considering the history of tenure security and the dynamics of property rights in South Africa, it is worth disaggregating the above findings by province. Researchers and policymakers have emphasised widespread tenure insecurity in the former Bantustan areas, located primarily in the Eastern Cape and KwaZulu-Natal provinces. Therefore, it is expected that respondents in these provinces will be most concerned about losing their land or property.

Table 1: Perceived likelihood of losing land, house or property, by province (SARB 2005–2011)⁵⁴

	National	KwaZulu-Natal	Western Cape	Eastern Cape	Northern Cape	Mpumalanga	Free State	North West	Gauteng	Limpopo
2005	12%	8%	7%	12%	8%	11%	5%	21%	20%	26%
2006	13%	6%	14%	19%	11%	16%	5%	24%	16%	33%
2007	13%	11%	9%	9%	14%	13%	9%	17%	18%	15%
2008	15%	10%	6%	11%	14%	17%	5%	23%	23%	33%
2009	12%	10%	11%	8%	5%	6%	25%	18%	15%	7%
2010	13%	8%	8%	8%	13%	9%	11%	13%	24%	13%
2011	14%	11%	11%	5%	18%	14%	31%	12%	19%	11%

Table 1 reveals two worthwhile findings. Firstly, respondents from two provinces were consistently below the national average in registering the likelihood of their land or property being taken away: KwaZulu-Natal and the Western Cape. Curiously, the province where respondents registered the third-lowest likelihood of the losing their land or property was the Eastern Cape. In short, very few respondents in the largest former Bantustan areas, in KwaZulu-Natal and the Eastern Cape, believed it was likely that their land or property would be taken away in future, despite having relatively weak property rights.

This perception of possessing secure land tenure despite living under ‘customary law’ reveals an anomaly between the legal-property system in South Africa and South Africans’ belief in their property rights. Despite weak Constitutional protection for their individual property rights, ‘customary’ systems that adapt to social needs and are structured around communal decision-making can often be effective means of providing land for constituents. Reflecting on years of working with the community of Ekuthuleni in rural KwaZulu-Natal to establish legal protection for its existing tenure arrangement, Donna Hornby claims:

The customary tenure system as it operates at Ekuthuleni provides a functional tenure security for most people in the community. It adapts as needed and responds to the specific. There are no professionals, no officials. Its logic is social. Rights reflect the accommodation of multiple land needs that intersect and overlap in a rhythm shaped by seasons, land uses and relationships.⁵⁵

Secondly, Table 1 reveals fairly erratic changes in perceptions; respondents seem to vary their perception of tenure security frequently. For example, in 2005 and 2006, only 5 per cent of respondents in the Free State believed it was ‘likely’ that their properties would be taken away in future. By contrast, in 2011, 31 per cent of respondents in the Free State believed this to be true. Respondents in Gauteng exhibited a consistently high perception that it was ‘likely’ that their properties would be taken away, emphasising how tenure insecurity is also prevalent in urban or peri-urban areas.⁵⁶

Figure 7: Perceived likelihood of losing land, house or property, by race (SARB 2005–2011)⁵⁷

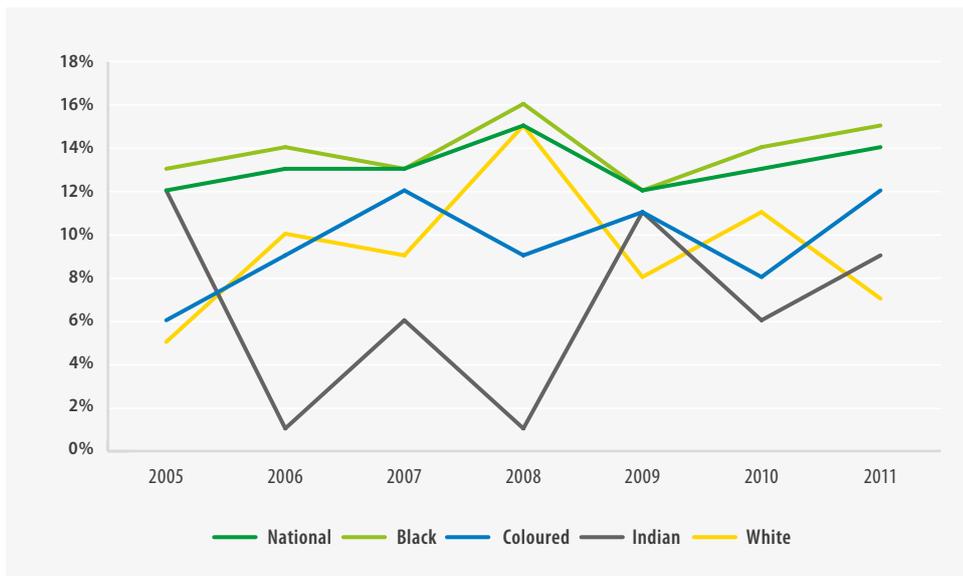


Figure 7 reveals the racialised differences in perceptions of tenure security. Although it is still a minority view, Black South Africans consistently express the greatest belief in their land being taken away; considering the population dynamics of rural areas and informal settlements in urban areas, this perception is relatively unsurprising. The results from other population groups are less predictable. White and Coloured respondents exhibit similar levels of tenure insecurity, fluctuating in alternating years, while Indian respondents typically express the lowest likelihood of losing their properties in future. In short, while the fears and anxieties of some White South Africans have attracted international attention,⁵⁸ Black South Africans are in fact the most concerned about and vulnerable to losing their land and property.

In short, while the fears and anxieties of some White South Africans have attracted international attention, Black South Africans are in fact the most concerned about and vulnerable to losing their land and property.

This section has revealed that South Africans are mostly confident that their land and property rights will be respected in the future. Contrary to expectations about the threat of ‘customary’ law on property rights, respondents in KwaZulu-Natal and the Eastern Cape were among the most confident in their land and property rights. Moreover, despite the outcry from organisations representing ‘minority’ rights, Black South Africans are more likely than any other population group to believe their land or property might be taken away, although it is still a minority opinion.

Conclusion

This paper has broadly explored four important aspects of land reform in South Africa, with a view to informing the present land debate with public opinion data from the SARB surveys.

Firstly, by providing a historical overview of land and property relations in colonial-apartheid South Africa, this paper has shown why land reform is necessary to address centuries of racialised imbalances and underdevelopment. Equally, post-apartheid legislative reforms have failed to bring about the expected changes in land relations in democratic South Africa.

Secondly, this paper established that most South Africans (75 per cent) agree that the system of apartheid and colonialism was ‘a crime against humanity’. Specifically, the SARB surveys reveal that about two-thirds (68–69 per cent) of South Africans agree that apartheid’s legacy of spatial planning and influx control has been to the detriment of Black South Africans and the benefit of White South Africans.

Land reform, then, has a significant degree of public support and many South Africans believe it can help create a more equitable and cohesive society.

Thirdly, the results of the 2017 SARB survey show that most South Africans agree that land reform is an important means to ‘address inequality’ (64 per cent) and further ‘the reconciliation process’ (63 per cent), and that both ‘government and privately owned land’ should be redistributed (65 per cent). SARB surveys have consistently shown that South Africans believe ‘inequality’ is the greatest division in society;⁵⁹ if South Africans believe land reform is important to address inequality, it is likely that land reform will be an important part of overcoming stark socio-economic divisions and developing a more cohesive society.

Fourthly, earlier SARB surveys asked South Africans whether it was likely or unlikely that their property or land would be taken away in future. This question helps to assess whether people believe their property or land tenure rights are secure. Until 2011, most South Africans (62 per cent) believed it was ‘unlikely’ their land or property would be taken away. Contrary to the legal protection offered in regions governed by ‘customary’ authority, respondents in KwaZulu-Natal and the Eastern Cape were among the most confident in their tenure security. Nationally, Black South Africans were most concerned about their property rights.

The four areas covered in this paper – (i) colonial-apartheid processes of dispossession, (ii) agreement on apartheid legacy, (iii) public opinion on the efficacy of land reform, and (iv) perceptions of tenure security – are important for establishing how South Africans think and feel about important aspects of the present debate on land reform.

In conclusion, this paper reveals that most South Africans agree that apartheid was immoral and produced significant socio-economic distortions, which continued in post-apartheid South Africa, and that these distortions need to be addressed. Furthermore, SARB data shows that most South Africans, despite

some racialised differences in opinion, agree that land reform is important to addressing inequalities in society and furthering national reconciliation. Finally, as well as support for land reform, most South Africans do not believe that their home, land or property will be taken away in future. Land reform, then, has a significant degree of public support and many South Africans believe it can help create a more equitable and cohesive society.

‘What is to be done?’

While this paper has, in essence, explored and presented the democratic mandate for the South African government’s purported intention to accelerate land redistribution, several issues remain uncertain.

Firstly, regarding the constitutionality of ‘expropriation without compensation’, several land and legal experts have argued that Section 25 already mandates this policy,⁶⁰ as long as the state can prove that expropriation is occurring ‘for a public purpose or in a public interest’⁶¹ and ‘the amount of compensation and the time and manner of payment [is] just and equitable’.⁶² Moreover, neither the judiciary nor the legislature has outlined what ‘just and equitable’ compensation might amount to, if the state were to expropriate privately owned land for redistribution.⁶³ In this sense, some have urged the legislature to be more proactive in implementing policies that test the existing constitutional framework and allow the judiciary to give credence to such policies, rather than simply to alter constitutional provisions that have not been properly utilised.⁶⁴

Secondly, it is unclear whether the ANC will implement all the land-related recommendations of the HLPR, specifically the recommendation to ‘repeal the Ingonyama Trust to bring KwaZulu-Natal in line with national land policy, and to secure land tenure for the communities and residents concerned’.⁶⁵ King Goodwill Zwelithini, who has controlled the Trust since its inception with the permission of the state, has publicly criticised the recommendations of the HLPR as an attack on Zulu rights to land.⁶⁶ If the state were to exercise greater administrative and redistributive authority over ‘customary’ land, it might affect the ANC’s support amongst ‘traditional’ leaders and their supporters. Will the ANC-led government risk implementing significant reforms to the nature of land holdings and tenure arrangements in rural areas a year before the 2019 national elections?

Thirdly, the DRDLR must establish greater accuracy in its data on land and property ownership. The two national audits are insufficient to make accurate claims about land ownership in South Africa or inform government policy. Moreover, the Department’s recommendations concluding the most recent report have been labelled ‘slightly bizarre’, as these are copied from UN recommendations to Eastern European states in 1996 and reference a blog post on land speculation in London.⁶⁷ The DRDLR is also understaffed and, in recent years, its budget has fluctuated significantly and decreased in real terms. Moreover, the Department’s efficacy has a direct role in land redistribution, where ‘there has been a downward trend in the pace of redistribution, measured by

hectares, since 2008'.⁶⁸ In order for land reform to be carried out at an accelerated pace and with improved efficiency, significant institutional and organisational improvements need to occur within the Department.

In short, while this paper has shown public support for land reform as part of an ongoing project of historical redress, the renewed emphasis on land reform in 2018 carries with it great political uncertainty. While the legality and efficacy of land reform processes within the current constitutional framework will be evaluated by Parliament's Constitution Review Committee, this paper makes clear that South Africans are in favour of land reform policies that will address pernicious inequality and further the reconciliation process.

Endnotes

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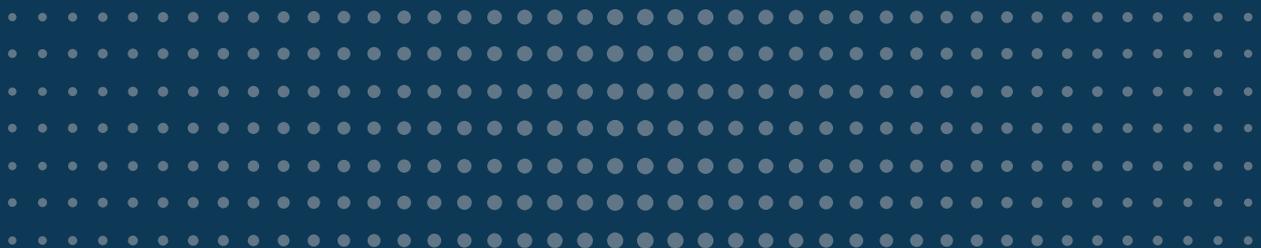
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- 35 Note: 'Don't know' responses are excluded from the graph, but were included as part of the data analysis. Respondents were asked: 'How much do you agree with the following statements about apartheid? (i) The apartheid government oppressed the majority of South Africans and (ii) Apartheid was a crime against humanity'. 'Disagree' is the sum of response categories 'Strongly disagree' and 'Disagree'; 'Agree' is the sum of response categories 'Strongly agree' and 'Agree'.
- 36 Note: 'Don't know' responses are excluded from the graph, but were included as part of the analysis. Respondents were asked: 'How much do you agree with the following statements about apartheid?' (i) "Under apartheid Black South Africans were deprived of land and property ownership", (ii) "In general, residential areas in South Africa are still racially segregated because of the lasting effects of apartheid", (iii) "Many Black South Africans today do not own land/property because of the lasting effects of apartheid", and (iv) "Many White South Africans today own land/property because of the lasting effects of apartheid". 'Disagree' is the sum of response categories 'Strongly disagree' and 'Disagree'; 'Agree' is the sum of response categories 'Strongly agree' and 'Agree'.
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- 53 Respondents were asked: 'How likely is it that your house, property or land rights will be taken away in the next 12 months?' 'Unlikely' is the sum of response categories 'Highly unlikely' and 'Unlikely'; 'Likely' is the sum of response categories 'Highly likely' and 'Likely'.
- 54 Note: Only 'likely' responses are recorded in the table. Respondents were asked: 'How likely is it that your house, property or land rights will be taken away in the next 12 months?' 'Likely' is the sum of response categories 'Highly likely' and 'Likely'.
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ABOUT THE INSTITUTE FOR JUSTICE AND RECONCILIATION

The Institute for Justice and Reconciliation (IJR) was launched in 2000 by officials who worked for the South African Truth and Reconciliation Commission, with the aim of ensuring that lessons learnt from South Africa's transition from apartheid to democracy are taken into account and utilised in advancing the interests of national reconciliation across Africa. The IJR works with partner organisations across Africa to promote reconciliation and socio-economic justice in countries emerging from conflict or undergoing democratic transition. The IJR is based in Cape Town, South Africa. For more information, visit <http://www.ijr.org.za>, and for comments or enquiries contact info@ijr.org.za.



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