Press Release

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IRR
South African Institute of Race Relations
The power of ideas

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DA/ANC support for the Restitution Bill risks disaster on a par with Britain's scorched earth policy during the Boer War

Two pieces of pending legislation could together result in the expropriation of commercial farming operations with zero compensation.

The first is the Restitution of Land Rights Amendment Bill of 2013 (the Restitution Bill), which will open up a new five-year window for the lodging of land claims. Some 379 000 new land claims are likely to be submitted and could cost the State about R179bn to settle, according to the Government's regulatory impact analysis. Yet in the 2013/14 financial year, the restitution budget was roughly R3bn. How, then, is the State to find the money to settle all these claims?

The answer could lie in the so-called Promotion and Protection of Investment Bill of 2013. This suggests that expropriated property owners will be entitled to 'just and equitable' compensation, but the Bill also contains a weasel clause stating that it is not 'an act of expropriation' if the State takes property, not as owner, but as custodian for others.

Where the State takes as 'custodian' – as the Constitutional Court has already ruled in a case involving mining rights – the deprivation of property from an existing owner is not matched by the acquisition of that property by the State. This means that there is no expropriation – and no right to any compensation.

Under the Investment Bill, the Government could thus pass legislation (modelled on mining law) providing that all agricultural land, farm equipment, and livestock vest in the State as the custodian of the nation's land resources – and inviting black South Africans, in particular, to apply to the relevant department for the right to use a portion of these assets for a specified period.

In these circumstances, commercial farmers would be deprived of their property, but the State would acquire it as custodian rather than as owner. Hence, there would be no 'act of expropriation' under the Investment Bill and no compensation would be payable.

Once the Restitution Bill is enacted and hundreds of thousands of new land claims are lodged, the Government could argue that it is obliged to honour these claims but lacks the money to pay compensation. Under the Investment Bill, it could then take the claimed land as custodian for land claimants – and without having to pay any compensation at all.

Says the IRR's Frans Cronje: "Together, these two pieces of legislation could spell the end of private property rights in South Africa – not just in agriculture but across the economy. We suggest that the Government and the African National Congress (ANC) may be preparing the ground to confiscate private property and distribute it to poor communities if and when they feel the need to do so. That time will come when the political pressure on the ANC is so great that it fears losing a future election.

"The Bill could also spell the end of commercial agriculture, so bringing about the collapse of the rural economy. Rural poverty and unemployment levels would then soar. In urban areas, rapidly rising food prices and the inflow of rural job seekers would add to desperation among the poor and unemployed.

"A myth is being peddled that accelerated land reform will boost rural economies and promote social cohesion. This is not so. South Africa requires large-scale commercial farming to meet its food needs and drive its rural economy. This in turn requires strong property rights. By contrast, taken to their end point, the two Bills could devastate the rural economy on a scale comparable to Britain's scorched earth policy during the Boer War.

"Both the Government and the Democratic Alliance, which says it will support the ANC in re-opening land claims, seem careless of this outcome, prompting the IRR to sound this warning. We do not do so lightly but because we can see where policy is headed."

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