*Slow progress in South Africa’s Land Reform Process: Fear of Property Rights and Free Markets? *

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Abstract:

South Africa’s land reform process after 1994 has experienced poor performance with respect to rates of land transfers to designated groups as well as low productivity rates in post transfer periods. Selected cases of land reform process in the last twenty years were used to illustrate some of the negative effects of failures to embrace freely functional land markets in South Africa. The paper argues that the poor performance stem mainly from policy misalignment underlined by political reluctance to fully embrace exclusive property rights and land markets that would ensure productivity increase on land transferred under land reform programmes. Given the failure of most classical economic analyses to account for socially undesirable re-distributional effects, the article illustrates that the policy confusion and political reluctance are not random occurrences but are explainable through more social analyses of potential cultural benefit streams to land recipients. Proposals are made for economic analyses to be more sensitive about their own limitations at explaining policy. Economic models that would leverage the economic benefits of markets while guarding against losing ground in terms of re-distributional gains made from the reform process should be sought.

1. Introduction

We propose that poor performances in the land reform process in South Africa are due primarily to fluctuating and sometimes conflicting policy messages since 1994. This discussion argues that the conflicting messages have contributed to two elements or attributes of documented poor performances in this process. Low transfer rates of targeted land for restitution and redistribution purposes and low productivity rates on transferred land have on the main characterised the poor performances of the land reform process. This paper more importantly argues further that the fluctuating messages in policy language, which we argue have led to

key challenges in the process, stem from policy makers’ caution or reluctance to embrace both exclusive property rights and free markets. We argue that this caution is not random but explainable at a social level and also justifiable at an economic (or theoretical) level and also empirically, given the intentions of political redress in the land reform process. The policy messaging began in 1994 by being driven by a need to redress past inequities along racial lines with respect to access to and ownership of land resources. The language of Reconstruction and Development Planning (RDP) with priorities to secure issues relating to access to land and other agricultural resources for poverty alleviation, for example as opposed to pursuing the commercialization of emerging black farmers as a primary goal (Lyne and Darroch, 2003). The language then moved towards one that supported the emergence of black farmers with market objectives. For example, there was the introduction of the willing-buyer and willing-seller as instruments to acquire and transfer land targeted for the historically key reform programmes such as the Proactive Land Acquisition Strategy (PLAS) and the Land Redistribution for Agricultural Development (LRAD).

In recent years the policy language and political discourse in the media have been confusing. While some policy, for example the Land and Agrarian Reform Project (LARP) and the new Agricultural Landholding Policy (ALP) support the resettlement of large communities from large agricultural holdings to cooperatives and family owned-holdings (DRDLR, 2013), it is still unclear how these cooperatives would function as commercial entities. It is also not clear how the large agricultural holdings from where the land would be redistributed would be compensated. The political discourse reported in the media at least has become less embracing (if not somewhat hostile) towards market instruments like the willing-buyer and willing-seller. There have been reported threats to abandon these market tools (Lyne, 2014) and there has also been a shift towards a more bureaucratic role of government centralised in one office, namely, the valuator-general. The proposed roles of this office seem even more technically challenging given the socially intricate legal responsibilities to arbitrate on historical and socio-political factors to satisfy conflicting stakeholder interests as illustrated in the principles of the Property Valuation Act (17) of 2014. Meanwhile, parallel to this unstable policy discourse many land reform projects have failed and these have been reported to varying degrees in the last fifteen years (see Lyne and Ferrer (2006); Centre for Development Enterprise (CDE, 2008); Hall (2009) and the Africa Research Institute (2013). It is against these historical developments and factors that the argument linking a changing policy and political discourse (that has failed to fully embrace
markets) to poor performances in the reform process is made.

The next section outlines the theoretical framework of the discussion with respect to the facilitation of economic markets by exclusive property rights. An overview of the recent land reform policy and its social and political objectives are presented in Section three. In Section four and five reports and data from studies across the country are presented to highlight the nature and extent of poor performances in varied land reform programmes and land use institutions. The data are interpreted using the theoretical framework developed in Section two and are explained through both social and economic lenses to justify the primary argument of the paper. Section six concludes by outlining trends in selected current and new policies and by making suggestions for policy and suggestions for broadening economic research agenda to account for more accurately for social and institutional or cultural explanations of events in the reform process.

A framework of property rights and associated socio-economic outcomes

The theoretical proposition of the *tragedy of the commons* by Hardin (1968) brought into light the social challenges of preserving natural resources, such as grazing land, in the absence of well-defined property ownership rights. However such rights would exist in varied forms given the attributes of the resource in question. Individual tradable ownership rights, for example, would only be explicitly assignable and protected in instances where the resource is in nature both divisible and excludable as discussed by Coase (1960). This discussion is concerned partly about identifying the social, political and economic outcomes that are possible in situations where there are no rights to the use or ownership of a resource like land to situations where full ownership are in place. This is chosen as a continuum on ownership and access rights also because it is useful in discussing particularly the South African policy choices and ideologies that have informed the land reform process since 1994.

Limited rights to ownership and access of land could for example be presented in the form of communal traditional rights under the custodianship of chieftaincy in traditional rural South Africa (Neves, 2006). The prevalence and efficiency (or lack thereof) of such rights in governing social relations on land, however, stems from social and cultural choice and not so much from the nature or attributes of the resource in question. Often communal rights bestow access to the use of resources and not ownership for sale in free markets. What public choice economists (e.g. Coase, 1960; Hardin, 1968 and Dales, 1994) have proposed on the other hand with respect to the assignment of full or limited individual or
communal property ownership or access rights depends on the technical attributes of the resource in question. Land, for example, can be divided into tradable units and non-buyers can be excluded from using it, while clean air on the other hand presents technical challenges with respect to being divided into exclusive units (Dales, 1994). In any case both cultural choice and technical attributes of a resource can act in collusion or independently to result in zero or full assignment of ownership or access rights to a collective group of people or individuals within this continuum we have presented. In technical terms when a resource is not divisible and excludable it is not possible to assign to it fully tradable individual ownership or access rights that allow for efficient market transactions to emerge. If for example it is not possible to technically exclude non-paying consumers from using a resource, such a resource would not attract private market buyers and this means that the resource would not form part of a fully-fledged competitive and free market. These resources can however still be governed and protected through other forms of ownership and access rights in our continuum, for example, they can be governed through collective ownership rights in less competitive markets as pointed out by Dales (1994: pp184-187) with respect to environmental water resources in lakes.

From this discussion it should emerge that the assignment of varied types of rights stems from both social and technical considerations to serve a number of different objectives, including cultural and market objectives. The question of land ownership in South Africa provides such variations of objectives. Neves (2006:194-202) writes that “although land has significant pecuniary value and is a significant source of rural livelihoods, rural relationships are rooted not only in the materiality of the land but in its manifold symbolic and social dimensions… Land is not just a commodity one buys, sells, rents, pledges as collateral, cultivates, forages, and grazes livestock on. Land is also where the dead are buried and reverence paid to ancestors”. Relationships of love, acceptance, power dynamics, and conflicts are also developed and displayed on land. This means that access or ownership of land is more that an economics question. It is also a social and ecological question. Hence the rights that are developed and assigned serve different social purposes over and above free market transactions that bestow or remove streams of economic benefits or losses. Hence these theoretical, economic and social dimensions to relationships with land collectively form a useful matrix for exploring the historical evolution and challenges of the land reform policies and process in South Africa.

A question could be asked on whether or not a land reform process should lead to an emergence of fully fledged markets with associated economic

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2 Including gender power dynamics (Walker, 2013)
benefits or should be limited to other social purposes, of which some have been presented here. Should these objectives be always spelt out in the policy documents that are promulgated by governments? This framework of analyses can be summarized in Table 1 below, which indicates a number of social and economic outcomes from varied policy choices and technical limitations for different types of resources.

Using the analytical framework in Table 1, land reform policies at a particular time in history can be linked with the type of predominant rights that are being promulgated politically or technically, the resultant governance structures as influenced by (and influencing) cultural identities, the typical farmers and associated social and economic outcomes from such choices. Over time, however, the location of such policies and their outcomes would be changing (slowly or rapidly), depending on other transformative socio-political forces at play. A brief overview of such policies is presented in the following section.

**A brief overview of the South African land reform process**

### Table 1: Continuum of rights with associated choices and outcomes

<table>
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<tr>
<th>Variable</th>
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Detailed accounts of South Africa’s land reform processes have been documented across a number of academic disciplines including in sociology (e.g. Neves, 2006) and in economics (Lyne and Darroch, 2003; CDE, 2008; Mbatha et al., 2010; Lyne, 2014, etc.). Broadly, three instruments have been used in attempts to redress the negative social effects of Apartheid policies stemming from the defining land dispossession of the Natives Land Act of 1913. The Apartheid policies allocated 13% of the country’s land for ‘native reserves’ or ‘homelands’ and the remainder 87% to Whites, thereby creating huge socio-economic inequalities. The post 1994 reform policies have proposed land restitution, land redistribution and land tenure upgrade as three key instruments to reverse the imbalances.

a) Land restitution (Restitution of Land Rights Act (22) 1994) – was proposed as a legal process to claim and return land to people who could prove they lost it after the 1913 event. The cut-off date was initially 1998 for the claims to be lodged (Neves, 2006:200).

b) Land redistribution – was proposed as an instrument to redress racial imbalances in land ownership by transferring it to previously disadvantaged people through government grants for commercial uses

c) Land tenure reform – was proposed as a tool to address insecure land tenure in former homelands and to address tenure security for farm workers and labour tenants on commercial farms through the security of tenure legislation. The processes under this instrument have been the most difficult given conflicting interests of stakeholders and contradictory parallel institutional systems governing communal lands.

(Lyne and Darroch, 2003; Neves, 2006 and Mbatha et al., 2010).

The current discussion uses the nature and impacts of land redistribution, especially, and restitution instruments to analyse the land reform processes within the framework presented in the preceding section to address the research question on lack of embracing of property rights and free markets. This is partially the case because these instruments were proposed to address both the imperatives of past redress of dispossession and poverty alleviation within some kind of a market oriented framework. The instruments encouraged a market related compensation to be paid for land transfers using a willing buyer - willing seller framework (DLA, 1997 in Mbatha et al., 2010) and in the case of land redistribution (LRAD), oncoming (new) farmers have been encouraged to engage in commercial activities (Lyne, 2014).

Lyne and Darroch (2003: 2) reported that by the end of 1998, about 68 800 claims were lodged with the Land Claims Court. But the process was very...
slow at the beginning, because only 12623 households had received 268306 hectares two years later in 2000 (i.e. one percent of land available for redistribution). But by 2002, more than 50% of the claims had been settled following an instruction from the president to finalise all pending claims by 2005. Nevertheless, Tuner and Ibsen (2000) in Lyne and Darroch (2003: 3) warned that many of the transfers could lead to “new rural ‘dumping grounds’ as they (were) not linked to a development process that (offered) livelihoods to beneficiaries”. This was a sentiment also shared by Neves (2006: 200).

The grant system for new beneficiaries of land was adopted to facilitate the land redistribution and restitution processes as advised by the World Bank in 1993 (see Lyne and Darroch, 2003). The motivation was that the poor would not be able to purchase land through mortgage loans as market values of land at the time exceeded their productive values due to historical farm subsidies in the republic. The government used a means-tested settlement/land acquisition grant (SLAG) to support poor household beneficiaries. In practice, households would pool the grants and buy farmland collectively under a community land trust or association for redistribution purposes. Approximately 500 households could then settle on a single farm, which effectively meant that farms were too small to use commercially after the transfers. Nevertheless, in combination the restitution and redistribution instruments had transferred only 1.2 percent of land to intended recipients during a period of six years. Given this performance the SLAG was then replaced by the LRAD for implementation in 2001. The main revision in the later instrument was to target recipients who were not too poor to qualify under a means-tested framework for a matching minimum grant of R20 000. For example, a farmer could now qualify for a matching grant of R100 000 if they brought in R400 000 on the table (Ministry of Agriculture and Land Affairs, 2001:8). This was a policy shift from mere settlements that could lead to proverbial ‘dumping grounds’ into commercial uses of transferred farms. In its first year, a million hectares were redistributed through the LRAD (Shabane, 2002 in Lyne, 2014).

Although the LRAD had more success compared to the SLAG, the transfer rates were still too low when contrasted to the desired 30% of commercial farms to 800 000 Black recipients (CDE, 2008: 5). Lyne and Ferrer (2006) found that only 3.8% of targeted land had been transferred in KwaZulu-Natal by 2003. More than ten years later, Lyne (2014) cites Nkwinti (2012) reporting that about 7.95 million hectares of land were transferred by 2012 through both the restitution and redistribution instruments. This means around 9 million hectares would have been transferred by 2014. Lyne (2014) also estimates that with the inclusion of private sales which are not recorded in official statistics about 15% of
commercial farmland would have been transferred to historically disadvantaged people in 2014\(^3\). Of the 800 000 farmers targeted initially, the African Research Institute (2013) reported that about 231 000 Black farmers and entrepreneurs had benefited from the redistribution instrument in 2013. About 20 hectares of land were received on average by a household during this process. The land did not translate into family owned farms or businesses, but the majority translated into community trust owned or operated farms with obscurely defined property rights. The rights have been in the form of voting and benefit rights in such trusts or community property institutions. Incentives for doing business through investing time, money and effort in farming under such institutional arrangements have been compromised. Hence, the CDE (2008) and Mbatha and Antrobus (2012) reported high failure rates with respect to productivity rates of around 50% of farmlands in their post transfer periods. The African Research Institute (2013) reported even higher failure rates, and estimated that around 90% of land that was no longer productive in 2010. These figures have dire implications for varied economic benefit streams, including derived livelihoods from subsistence agriculture and employment rates to direct beneficiaries and the economy in general. This remains the case even if the land transfers may have still served other social and cultural benefits or objectives mentioned earlier in the study and also emphasized by Neves (2006).

Selected case studies on land redistribution, property rights and styles of management

Even though productivity rates have been generally low on transferred farms in the country, in a microeconomic study in KwaZulu-Natal farm transfers in two municipality districts of iLembe and uThungulu (2003 to 2006), Mbatha and Antrobus (2012: 99) identified differentiated performances across thirty farms with different regimes of institutional arrangements. On farms where there were clear long term contracts, with well-defined commercial rights for stakeholders involved, the land was used more productively. They concluded the following:

\[ \text{On farms with no cooperative contracts in place - productivity rates dropped by 12\% in post-transfer periods, while productivity increased by almost 10\% on farms acquired (within) cooperative (arrangements). The (KwaZulu-Natal) data indicated that cooperative institutional arrangements were important (if not key) for the successes in land redistribution transactions. The institutional arrangements were based on mid to long-term contractual obligations for key} \]

\(^3\) Given the 190 Subdivision of Agricultural Land Act, which limits partitioning of farms into small and affordable units, Lynne (2014) sees the 15\% as remarkable.
stakeholders, where financial support and skills transfer to new farmers could happen (and economic benefit streams flowed to supporting and experienced farmers who transferred farming skills). These also serve(d) as important lessons for the land reform policy process in South Africa.

In an earlier study Mbatha, Antrobus and van Rooyen (2010) also found that the reported slow rates of land transfers were also not due to the market process of the willing buyer and willing seller framework, but long drawn valuation processes on the side of government agencies. In addition, the same contractual arrangements that promoted high productivity rates on transferred farms were also associated with lower than market prices for land acquisition by government agencies in the redistribution processes. This was an additional economic benefit at a social level to stakeholders involved, especially tax payers who are supporting land acquisitions. A detailed presentation and discussion of the data is presented in Mbatha and Antrobus (2012). Lyne (2014) also highlights a case of similar economic benefits in the case of the experience in farm worker equity share schemes in the Western Cape. He argues that a level of economic benefits have been bestowed on workers by creating unitized trusts that represent better the economic interests of workers compared to community property trusts in the land restitution landscape.

The Kat River Valley cases: communal access versus individual ownership rights

A detailed case of three groups of farmers located in the Kat River Valley (KRV), Eastern Cape in South Africa is presented in microeconomic studies by Mbatha and Antrobus (2008, 2011 and 2013). This case illustrates issues of underdevelopment by comparing the lack of rights with respect to poorly resourced subsistence communal farmers against the endowment of land and water rights associated with commercially viable individual farmers. Poorly resourced subsistence farmers were associated with a lack of well-defined rights in terms of both water and land resources, even though this is not supposed to be the case, given their location at the upper end of the basin and close to the Dam as represented in Map 1.
Map 1: The three farming sections of the Kat River Basin (Mbatha and Antrobus, 2008)
On the map, subsistence farmers were located in areas like Balfour, Fairbain, and Tamboekiesvlei, near the Kat Dam. Their proximity to the dam should have favoured them most in terms of productivity rates because of their close access to water resources - at least according to the Physical Externality Model (Bromely, 1982). In reality however the opposite was found in the valley. Farmers in the Middle and Lower Kat were the most commercially successful during the study period. Compared to Upper Kat farmers, the Middle and Lower Kat producers had individual land ownership rights and formed part of the Kat Irrigation Board that distributed water resources from the dam. On the other hand, the Upper Kat farmers had no such rights to land and water resources, as a production input, due to a history of deprivation associated with the past laws of dispossession which have been outlined in earlier discussions. While Black farmers in the Middle Kat were not as big as White Middle and Lower Kat farmers, they had clear ownership land rights which they could use as collateral to negotiate successfully business ventures with more successful White Middle Kat farmers, for example. This was however not possible for Black farmers in the Upper Kat who held no land rights to the land used for farming in the area. Not only did the lack of land ownership rights prevent Upper Kat farmers from negotiating with Middle and Lower Kat farmers for business ventures, but the lack also meant that subsistence farmers were not able to expand their own production capacities and markets through other avenues including financial loans.

Even though the KRV status quo did not result directly from post 1994 land reform policies, but from historical Apartheid laws, it remains a clear illustrative case of what a lack of exclusive land rights, among other variables, can lead to in terms of denying economic benefit streams to non-holders. While in theory “the highest land development opportunities lay in the Upper Kat and least in the Middle Kat” (Mbatha and Antrobus, 2013), it was ultimately in the Upper Kat where very low levels of agricultural development (if any) took place. In total, less than a 100 hectares of land was under cultivation in the Upper basin's main villages (Mbatha, 2007: 145-155), while 442 and 276 hectares of land were under irrigation in the Middle and Lower Kat, respectively in 2004 (Mbatha and Antrobus, 2008: 483). It was also in the Upper Kat where vast amounts of land lay fallow and uncultivated for years (see a comparison of land use in Appendix 1). Researchers observed that the lack and uncertainty surrounding land ownership rights in the Upper Kat did not only pose challenges with respect to typical indicators of economic development but they had a negative on the implementation of the National Water Act of 1998. For example, the following simple bivariate regression model (Anova) of cross-sectional
household data in the poor Upper KRV (n=198) was estimated:

\[ \text{INC}_i = \beta_1 + \beta_2 \text{LAN}_i + u_i \]  
\[ \text{.................} \]  
\[ \text{..................} \]  
\[ \text{(eqn. 1)} \]

Average incomes of households with some rights to land were estimated to be at double the level (R756-00) of those with zero or unclear land rights (R411-00), at more than 90% level of confidence. A similar finding with respect to average levels of household education was also found (Mbatha, 2007: 210).

These microeconomic reports from KwaZulu-Natal and the Eastern Cape provinces indicate the real and potential usefulness of clearly defined commercial or land ownership rights presented in contracts or deeds, which are likely to lead to inflows of economic benefits to holders. In post 1994 land reform cases, this was the case even when the question of full individual ownership rights had not been fully resolved nor embraced by national policy as argued by Lyne (2014). He argued further that poverty alleviation can best be fought through income redistribution, for example in the form of income grants, as opposed to transferring land with no clear ownership rights to encourage economic activities. This is especially the case where transferred farms would lie idle after their transfers and in cases where land redistribution and restitution have led to so called ‘new rural dumping grounds’ as warned by Tuner and Ibsen (2000). Collective ownership rights with multiple shareholders have an important role to play in the management of some (natural) resources as illustrated in Table 1, for example public resources. However, for resources like land where exclusive individual rights are possible to allocate, economic benefits would be maximized though an allocation of clearly defined exclusive rights in terms of use, productive activities and commercial interests. In the current system used by the government of establishing community property trusts, time, effort and money investments onto transforming the farms into viable businesses are discouraged. An economic classification of the cases under review can be illustrated using Table 2 adapted from the typology in Table 1. In the classification, the Eastern Cape, subsistence Upper KRV farmers would be the most negatively affected in economic terms while black farmers in the Middle KRV would be most close to the economically ideal farms.
Table 2: Classification of farmer communities using the continuum of rights

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Upper KRV
KZN-no contract
KZN-contract
Middle KRV
Economically ideal

Most economic analyses would influence policy into moving all farmers to the right of the table into an economically ideal state and environment. However, this has largely not occurred. In fact we can argue that the policy language started off mostly from an egalitarian base of the Reconstruction and Development Programme (RDP). It then moved towards the market economy language in the adoption of the Willing Buyer and Willing Seller framework. With the recent policies it appears the language has again shifted and lost some of its acquired economic elements, which were embedded in the LRAD policy.

We propose two factors that we believe have contributed to this status quo even in the face of strong evidence showing that the current models used in the land reform processes have not yielded much economic benefits, especially in economic terms, even though recent policies have indicated some fluctuating desire for such benefits. First, given the history of land dispossession and its...
associated psychological trauma on the majority of the population, which is well articulated by Neves (2006), policy making is conflicted between a focus on redress of land ownership inequalities versus a focus on the embrace of free market forces. The focus on redistributing land resource access and possible use to previously dispossessed communities does bear benefits that may not show up strongly in a strictly economic investigation. Such benefits are mostly social in nature, for example the use of land for burial purposes, as mentioned by Neves (2006) as well as Walker (2013). Second, the free market trading forces on the other hand that would stem from individually and exclusively defined ownership rights, while they have a better chance of bestowing additional economic benefits they also have a probability of reversing gains from a political redress of unequal land ownership by race.\(^4\) Within a completely free market, nothing would prevent new beneficiaries of farms from trading away newly acquired land for money or other alternative resources.

The Edgeworth box in Figure 1 is a classical economic model which illustrates the indifference of economic theory to issues of redistribution of resources in pursuit of economic (pareto) efficiency. Although much economics theory has shifted from this thinking, in reality many more still apply the thinking as taught in basic economics course at undergraduate level and the general perceptions are that most (if not all) economists subscribe to these basic principles. To illustrate the virtues of trade and pareto efficiency, the Edgeworth box model uses two players who are encouraged to trade (bargain) freely in an inefficient economic system in order to reach an agreement (contract) that would improve their individual welfare status and in that process transform the economic system into one that is (pareto) efficient.

In the model, an inefficient agricultural economy is represented by any point away from the contract line (also called the efficiency line). The lines, tangent to each other, represent indifference or satisfaction curves, along which players (e.g. Farmer A Farmer B) experience the same level of satisfaction. The next curve away from the point of origin (e.g. 0FA) represents an increase in satisfaction levels (e.g. for Farmer A). In economic theory when individuals or players can freely bargain and trade with each other by agreeing to exchange resources (e.g. food for clothing), they can improve their overall level of satisfaction to a point where further trade cannot improve satisfaction anymore.

\(^4\) Similar reversals of gains from political redress policies have already been observed in other markets in the country. For example, it has been reported widely in the media (e.g. Mail & Guardian) that over the years in some poor communities households have been able to trade away RDP government houses aimed at reversing past inequalities (Gqirana, 2015, online).
That improvement is represented by a movement from a point like H to a point like F or G, where at least one of the players is made better off, without harming the other. After free trade has taken place the market economy would operate efficiently on the contract curve. This is the most primary argument for free markets in economic thinking. It is that free markets are able to improve society’s welfare by improving the satisfaction of at least one individual, while no one else is harmed. In moving the economy from point H to G, Farmer A would for example move onto a higher level of satisfaction (indifference curve), while Farmer B remains at the same level. If the economy moves from point H to any point on the contract curve between points F and G, then both players would move onto a higher level of satisfaction. Any outcome that leads to a point on the contract curve is encouraged by classical economic theory. The only determining factor with respect to which point trade would achieve on the contract curve from point F to G depends on the individual bargaining skills of the two players involved. We can however observe that only one outcome would favour both players equally (point X), while other points between F and G would favour more only one of the players. Hence, classical economic theory that advocates pareto efficiency is silent about such potential distributional differences in such outcomes.

Efficient trade can lead to social inequalities, hence the fear of many policy makers to embrace egalitarian
views about society. Many economists and neo-liberal thinkers, on the other hand accept unequal societies where some are made better off while no one is made worse off by free markets. Allowing free trade to take place within the land reform landscape could benefit anyone in the country acquiring land set aside for redistribution purposes. Individuals and groups not targeted by policy for land redistribution objectives could for example acquire such land resources without causing economic harm to the targeted beneficiaries of the policy reforms. However, such structural changes would miss the political objectives of land reform policies. We propose that these economic possibilities are at the centre of land reform policy ambiguities and could be justifiable if policy was not sophisticated enough to prevent their occurrence. Occurrences of a similar nature have been reported in other contexts, such as the RDP housing markets, in which political objectives of redress have been compromised.

It is clear that there are cases to be made from both sides of the argument. The argument from classical economic models, which is also represented in Table 1, is valuable in pointing out explicitly the economic benefits that would accrue if the land reform processes were to embrace a free market framework more aggressively. Current policies have resulted in inefficiencies that have been documented throughout the land reform process since 1994 (e.g. CDE, 2008). However, we would still not know what political outcomes would arise if free markets were left unmonitored, even if we did know trade would improve pareto efficiency and overall economic welfare. This political uncertainty has led to a policy language that is cautious of markets at best and skeptical at other times in the land reform process. Compounding the state of policy is the socio-cultural reality that guarantees the accrual of other benefits especially to males in traditional and patriarchal societies (e.g. Walker, 2013) that are non-economic in nature from relationships of power in land (Neves, 2006). The existence of these other basic benefits, especially to those who are culturally favoured, and which are often difficult to identify and to quantify using purely economic tools, we argue has widened the gap in reaching a common understanding between predominantly utilitarian economic analysts and egalitarian policy makers.

The support of a more collective and traditional approach with no tradable rights in many spheres of public policy has come primarily from COSATU (2001). For example this was observed in the union federation’s criticism of the first draft of the Cooperatives Bill in 2001, which had originally made a provision for tradable investor shares that could also be purchased by non-members. It appears that the fear was that if such trade were allowed to happen in the land reform process, the emotionally charged political objective of returning land to historically
dispossessed communities and individuals would be negatively affected in the long term. Therefore, because land acquisitions bestow more than just economic benefits on recipients and because free markets are quite likely to reverse actual land redistribution gains\(^5\), the political reluctance to embrace a strong market driven framework in the country’s land reform process has some conceptual explanations. The support of a more collective and traditional approach with no tradable rights in many spheres of policy has come primarily from COSATU (2001). For example this was observed in the union federation’s criticism of the first draft of the Cooperatives Bill in 2001, which had originally made a provision for tradable investor shares that could also be purchased by non-members. The message has clearly been the fear of embracing trade which could redistribute resources away from members of a community cooperative. 

At a technical level, Lyne and Darroch (2003: 25) and Lyne (2014: 4) argue correctly that government policy has not embraced in clear terms a free market framework of individual rights that would enable a free flow of broad economic benefits to land recipients in the land reform landscape. They attribute this ambiguity in policy partly to the effects of the Subdivision of Agricultural Land Act (70) of 1970, “which (they say still) constrains the partitioning of farms into smaller and more affordable units”. They add that the Act set up “barriers to the subdivision of farmland, which have prevented many emerging farmers from making private purchases of land”. They conclude that the market could have achieved much more were it not for this major constraint. Our argument is that at a technical level this may be true, but the fact that the Ministry of Agriculture and Land Affairs (2001: 6) explicitly discounted the Subdivision Act by stating that “permission to subdivide for sale under the LRAD will be effective immediately upon the launch of the LRAD” may be another indication that the challenge and the uncertainty as to which policy direction to go lies more at a political level than at a technical level. The criticism of market oriented solutions by COSATU, for example, its criticism of trade in one of the drafts of the Cooperatives Bill is evidence to where the reluctance really comes from. The fear of what negative trade could do to gains from political redress and the fact that land repossession bestows more than just economic benefits provide better explanations of land reform policy inconsistencies.

Since 2009, the tone of the policy language also indicates an increasing level of cautiousness with respect to the adoption of market values for determining land prices. There is also a strong move to centralize the management of the whole reform process, from the identification of and purchase of land and beneficiaries, to the monitoring of their productivity and transfers of title deeds where applicable.

\(^5\) Even if this is only in terms of access
Revised future policy and concluding summary with some recommendations

The LRAD and PLAS have since 2009 been incorporated into the Land and Agrarian Reform Project (LARP) with a mandate to redistribute 5 million hectares of agricultural land to 10,000 farm dwellers using both the PLAS and LRAD grants. Lyne (2014) argues that from such a proposal the resulting average plots per farmer would still be too large to facilitate an efficient productive use and market related transactions among small scale farm producers. On the surface the new Property Valuation Act (17) of 2014 that is currently under implementation appears to have been an appropriate response to some of the reported bureaucratic challenges hampering the land valuation processes and the generally low productivity rates (Mbatha et al., 2010 and Mbatha and Antrobus, 2012). In practical terms, however, the LARP and the principles in the Act seem more likely to add to (rather than subtract from) the reported transaction costs. For example, the LARP proposes that government would now be responsible for purchasing and subdividing the and into smaller plots, selecting the right tenants with demonstrable skills to farm productively, leasing the land to selected communities or individuals, monitoring their performances, evicting non-performers, etc. Those who succeed commercially would be given an opportunity to purchase the land at market value. This long list of such elaborate tasks, performed correctly, would more likely add to the current bureaucracy and transaction costs, which would slow down the process even more. Even before such bureaucratic functions are carried out, the Act has also expanded on the guiding principles in the determination of the value at which the land properties must be acquired for land reform. Even the proposed valuation process would more likely get more cumbersome as it tries to incorporate more egalitarian principles of social fairness. The market value of a property now is only one of five principles that need to be considered by the ‘Valuer General’, established by the Property Valuation Act (17) of 2014. The Act stipulates that “the value of property identified for land reform should reflect an equitable balance between public interest and interests of those affected by the acquisition, having regard to all relevant circumstance including (the following):

(a) current use of the property;
(b) history of the acquisition and the use of the property;
(c) market value of the property;
(d) extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
(e) purpose of the acquisition” (pg. 1).

While trying to achieve the egalitarian principles of fairness and redress, the market approach to compensation would now be padded by a more
uncertain political rhetoric that would be even harder to negotiate in terms of its practical meanings and implementation. Trying to reach a consensus between public and private interests is often (if not always) an overdrawn process that often lends itself to legal processes. If many more court disputes arise because agreements cannot be reached, the speed of valuation processes would be retarded further. The centralized and bureaucratic nature of identifying and managing new farmers to determine which ones would ultimately be evicted and which ones would be given opportunities to buy and own the land would more likely slow the rate of giving out title deeds to new farmers. Without ownership titles, free land markets would not emerge quickly enough to present the economic benefits identified in earlier sections of this discussion. These developments would more likely not increase the already very low rates of productivity on farmlands that have been transferred in both restitution and redistribution cases. However if the process - although slow - is successful, most of the potential negative socio-political outcomes associated with blind and free markets may be prevented from occurring. The slow process may for example succeed in preventing a potential development of markets that may reverse the gains of political and historical redress of inequalities in land access and ownership across racial groups.

This discussion indicates if anything that socio-economic choices are no clear cut. With every choice made there have always been and there will be associated costs and benefits. Economic analyses are not off the mark in identifying what economic benefits would be lost if a completely non-market approach is embraced in the land reform processes. In the case of South Africa, this has already been illustrated and validated by numerous evidence in the form of quantifiable data from different agricultural sectors and geographical locations in the past twenty years. On the other hand, the political concerns embedded in a fluctuating policy language seem justifiable around what potential and unintended political developments may arise if completely free markets were to be allowed to emerge unmonitored in the land reform landscape. Similar unwanted and negative developments have been documented in other sectors, for example in the RDP housing ‘markets’ in the country.

The main objective of this discussion has been to illustrate that the current status quo in policy that is seems confused with respect to the land reform process is not accidental. There is a theoretical and empirical justification for what we would call a ‘fear of property rights and free markets’ in policy circles. Unfortunately the lack of embrace of ownership rights and markets by policy has had its share of negative contributions towards failures in the land reform processes. These have been pointed out more strongly in economic analyses.
In the continuum provided in the framework in Table 1, land resources are not typically pure public goods with respect to their attributes of excludability and rivalry. Hence the management of land does not lend itself to public or collective management regimes from a theoretical perspective. The assignment of clear property ownership rights to land is an appropriate tool to manage these resources efficiently. The challenge within the land reform process comes from the political mandates of historical redress. The political objectives of increasing land access and ownership for racial redress have rendered the land reform process not completely amiable to unmonitored free market forces that may arise from clearly defined collective individual ownership rights. However, the political problem is not the assignment of clear property rights or markets. The challenge is how government should assign property rights to beneficiaries and allow markets to develop to ensure high levels of productivity are achieved and maintained on transferred farmlands without reversing any of the political gains of broadening equal access and ownership of land resources across racial groups. This is the question on which policy makers and economic analysts need to invest their efforts. The workable solutions and designs as answers in addressing current reform challenges would lie somewhere between the extreme outcomes of free markets and state involvement in monitoring the market forces and putting measures that would prevent or reverse a more equal distribution of land access and ownership rights.

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