Land (and settlement) reform post-expropriation: Shifting the focus to the 'Sustainable Human Settlement Development' imperative

Mark Oranje & Jeannie van Wyk

Abstract

Land reform in South Africa has paid less attention to the creation of fair and viable post-apartheid urban human settlements than it has to rural land reform. While expropriation of land with or without compensation will deliver land, the question as to what happens post-expropriation has not been addressed. A reconsideration and redesign of the South African legal, policy and institutional frameworks, and spatial planning instruments are required, in order to enable the process of urban land reform to deliver on the development of sustainable human settlements. Since a number of countries have successfully dealt with large-scale restructuring and redevelopment, an examination of the methods employed in two countries, namely Rwanda, post-the genocide in 1994, and The Netherlands, post-World War II, is undertaken to facilitate that process.

Keywords: Land reform, national reconstruction, settlement development, South Africa, Rwanda, The Netherlands

GRONDHERVORMING (EN MENSLIKE NEDERSETTING) POST-ONTEIENING: 'N FOKUSVERSKUIWING NA DIE IMPERATIEF VAN 'VOLHOUBARE MENSLIKETTINGSONTWIKKELING'

Grondhervorming in Suid-Afrika het minder aandag geskenk aan die skepping van stedelike regverdige en leefbare post-apartheid menslike nedersettings, as aan landelike grondhervorming. Alhoewel onteiening van grond met of sonder vergoeding wel grond beskikbaar sal stel, is die vraag eerder wat ná onteiening gebeur. Suid-Afrika se regs-, beleids- en institusionele raamwerke, en ruimtelike beplanningsinstrumente moet heroorweeg en herontwerp word, sodat die proses van stedelike grondhervorming kan voldoen aan die ontwikkeling van volhoubare menslike nedersettings. Omdat daar lande is wat grootskaalse herstrukturering en herontwikkeling suksesvol aangepak het, word ondersoek ingestel na die metodes wat in twee lande, naamlik Rwanda, na die 1994-volksmoorde, en Nederland, na die Tweede Wêreldoorlog, aangewend is om daardie proses te fasiliteer.

Sleutelwoorde: Grondhervorming, nasionale heropbou, Nederland, nedersetting ontwikkeling, Rwanda, Suid-Afrika

NTLAFATSO EA METSE KAMORA KHUTLISO EA LEFATSHE: TSEPAMISO EA MAIKUTLO BOHATONG BA NTSHETSOPELE E TSETSITSENG EA METSE

Phetoho ea tsamaiso ea lefatshe naheng ea Afrika Borwa e shebane ho fetola metse ea mahaeng ho feta ho kenyeletsa toka khahong ea metse ea litoroppong kamora nako ea aparateiti. Le hoja ho khutlisa lefatshe, eba ka ho fana ka matshediso kapa che, ho tla tlisa lefatshe ho ba bang ba le hlokang, potso e so kang e arajoa ke hore na hotla etsahalang kamora hore lefatshe le khutle. Ho hlokahala phetoho ea melao le meralo ea thero ea lefatshe molemong oa ho netefatsa hore phetoho ea lefatshe e tlisa ntlafatso e tsitsitseng ea metse e litoropong. Kaha ho se ho ntse ho ena le linaha tse kileng tsa fetola tsamaiso le ntlafatso ea lefatshe, boithuto bona bo sebelisitse mehlala ea naha ea Rwanda kamora ntoa ea 1994, le naha ea Netherlands kamora Ntoa ea Bobeli ea Lefatshe.

1. INTRODUCTION

Land reform in South Africa is both an objective in its own right – correcting the injustices of historical spatial dispossession and impoverishment – and a crucial tool in the realisation of multiple other objectives that relate mainly to rural land, and as such neglecting, to a large extent, the urban context of land reform (Pienaar, 2014: 647-648). The objectives of the Constitution and subsequent land-reform legislation were land redistribution, land-tenure reform and land restitution, with the main focus on rural land. Since the Property Valuation Act No. 17 of 2014 (PVA) that must apply in land-reform expropriations defines 'land reform' to include 'land development', the creation of socially fair and viable post-apartheid human settlements in urban areas is now an objective of land reform (RSA, 2014b).

While recognition is given to the importance of meeting the overall objective and sharing the view of many both in and outside South Africa that its resolution is way overdue, the authors also concur with others that urban land reform has received far too little attention (Cousins, 2016). This is clear from the inclusion of 'urban land reform' and 'spatial transformation' in the brief of the Presidential Advisory Panel on Land Reform and Agriculture, established as a result of

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the parliamentary review process on expropriation without compensation during 2018 (RSA, 2019d: iv, 5, 11; RSA, 2019a: 15). This imbalance must be corrected, as the successful realisation of urban land reform is not concluded when the land is returned, or financial compensation paid. It is at the moment of land release when a much longer process of building a new kind of settlement – one that has been well-considered, properly planned for, adequately budgeted for, and is true to the ethos of restoration and equity that underlies the main objective – is put into motion. The fundamental transformation associated with the realisation of urban land reform is not a once-off step, but rather a pursuit that will require at least a generation or two of sustained focus on, investment in, and support of a collaborative process of settlement building.

In 2018, Parliament accepted that the property clause in the Constitution should be amended to provide for expropriation without compensation for purposes of land reform. Expropriation without compensation is often viewed as the 'silver bullet' that will provide land for all in South Africa. Whether this is, in fact, the case is debatable (Pienaar, 2019). However, the case is that land is urgently required for settlement in, or close to urban areas. How that land is acquired is irrelevant, and the authors argue that expropriation with or without compensation should not be the pivot on which land reform turns. The debate should be about the implementation of a programme that progressively utilises land reform in the development of safe, secure and sustainable urban human settlements. The implementation of such a programme should commence with a thorough review and even a fundamental redraft of development and spatial planning acts, frameworks, plans, and policies produced post-1994.

In order to assist in adequately dealing with the challenge of large-scale, urban spatial transformation post-expropriation or acquisition

of land as part of land reform in South Africa, international examples of large-scale urban redevelopment and spatial transformation can provide insights. While many countries have been through such a process, two examples - one in Africa and one in Europe - were chosen for this purpose, namely Rwanda, post-the genocide in 1994, and The Netherlands, post-World War II. Both these countries saw it as a priority to implement a set of integrated policies, legislation and plans; they realised that measures needed to be implemented expeditiously and they related specifically to spatial redevelopment of urban areas. Moreover, their plans were ambitious and successful.

The methodology employed is mainly comparative, but also historical and descriptive. The aim is to learn what it took (The Netherlands), and what it is taking (Rwanda) to turn around dire situations where reconstruction and redevelopment were required, and what 'insights' they offer in guiding the process of reconsidering and remaking the legal, policy and institutional frameworks, and spatial planning instruments in South Africa.

2. LARGE-SCALE COUNTRY AND SETTLEMENT RECONSTRUCTION AND REDEVELOPMENT

In this section, Rwanda is engaged as an example of a country that has made serious work of reconstructing a country and healing a divided nation, as well as embarking on a settlement planning and redevelopment drive. The Netherlands is engaged as an example of a country that embarked on a national and urban reconstruction project post-World War II.

2.1 Rwanda

On 6 April 1994, the aeroplane carrying the then Presidents of Rwanda and neighbouring Burundi,

both of whom were Hutus[1] (the majority ethnic group in Rwanda), was shot down as it was preparing to land in the Rwandan capital, Kigali (Hilsum, 1994; Howard, 2014). Despite there being no evidence as to the identity of the perpetrators, it was immediately attributed to the Tutsis (a minority ethnic group in Rwanda). Soon thereafter, radio broadcasts of hate speech encouraged Hutus to kill all the Tutsis in the country (Hilsum, 1994; HMDT, 2019). Within hours, brutal killings began, leading to a 100-day genocide, during which Hutu extremists killed between 800 000 and one million Tutsis, moderate Hutus,[2] and a few Hutu leaders from political parties other than the governing party (RoR, 2013b: 17; World Bank, 2019: ix; Howard, 2014).[3] This led to between two and three million Hutus fleeing Rwanda for neighbouring countries[4] (RoR, 2012: 3; Verpoorten, 2005: 331).

A day after the attacks, a counter-offensive was launched by the military wing of the rebel Rwanda Patriotic Front (RPF) - the Rwanda Patriotic Army (RPA) - led by the then General Paul Kagame (a Tutsi), resulting in the RPA capturing Kigali on 4 July 1994. On the same day, the genocide ceased. The RPA declared a cessation of all hostilities on 18 July and, on the following day, the RPF installed a Broad-Based Government of National Unity (RoR, 2012: 3; RoR, 2013b: 17; HMDT, 2019; World Bank, 2019: ix, 2; Hilsum, 1994). Since the country was socially, physically and economically decimated and

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1 The authors are aware of the deep sensitivities with respect to ethnicity in Rwanda and the government's outlawing of references to ethnicity in any form of political engagement or official documentation or communication after the genocide (Verpoorten, 2005: 332, 358). The references to ethnicity are provided, as they are required to understand the genocide.

2 Meaning Hutus that were regarded as sympathetic to the Tutsi (Verpoorten, 2005: 333-334).

3 At the time, Rwanda's estimated population was between 7 and 7.5 million people (Verpoorten, 2005: 332).

4 Primarily, the then Zaire (now the Democratic Republic of Congo) and Tanzania (Times Reporter, 2007).

government institutions severely damaged, the new government embarked on a programme of transformation and nation-building (RoR, 2012: 3-4; Turok, 2019: 221; World Bank, 2019: ix, 3).

It was, however, only when Mr Paul Kagame became President in March 2000 that reconstruction efforts took off in earnest (World Bank, 2019: 3). Core components were to plan and manage the reconstruction and national rebuilding project from the centre, and actively secure foreign technical and financial support, to prepare and implement the country's plans. The drive to attract and sustain foreign investment for the reconstruction endeavours was supported by demonstrating that the country was stable, well-managed and disciplined, there was zero-tolerance for corruption and mismanagement, and locals, visitors, as well as property and investments were safe (Turok, 2019: 222).

A raft of statutes, codes and presidential orders and instructions was progressively introduced and include, most notably, Law 10/2012 Governing Urban Planning and Building in Rwanda and the Rwanda Urban Planning Code of 2019 (ROR, 2019a), providing the basis for urban "forward planning", development management, and plan implementation. Law 20/2011 Governing Human Habitation in Rwanda defines human settlements and criteria for such areas (RoR, 2019b).

A key institution in the reconstruction project has been the National Development Planning and Research Directorate (NDPR) in the Ministry of Finance and Economic Planning. The NDPR's core functions include coordinating national development planning between central and local government; monitoring progress on the realisation of development objectives; ensuring alignment between development plans and budgets, and building capacity in the areas of planning, monitoring and investment (RoR, [n.d.]c; RoR, 2012: 22).

The first flagship document emanating from the NDPR was Rwanda Vision 2020 that was prepared through a broad-based national consultative process commencing in 1997. It was adopted in 2000 and revised in 2012 (RoR, 2012). Through the highly collaborative process followed, Vision 2020 came to be regarded as "a bond that holds (together) Rwandans as a people determined to build a better future" (RoR, 2012: i). Vision 2020 identified six densely interwoven pillars,[5] three cross-cutting areas,[6] and forty-eight performance indicators to be pursued in tandem (RoR, 2012: 1; 9-16; 25-30; RoR, 2017: 8; Turok, 2019: 222).

In order to implement the multi-pronged Vision 2020 in manageable portions and detail-out the targets, medium-term Economic Development and Poverty Reduction Strategies (EDPRS)[7] were introduced (RoR, 2012: 1-2; RoR, 2013b; RoR, 2013c). These strategies and programmes guide the preparation of a myriad of seven-year Sector Strategic Plans and Development Strategies,[8] as well as a detailed range of programmes and plans,[9] each based on a solid 'theory of change' (RoR, 2013a; RoR, 2013b; RoR, [n.d.]a). These, in turn, provide the developmental guides within which

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5   These are good governance and a capable state; human resources development and a knowledge-based economy; private sector-led development; infrastructure development; productive high value and market-oriented agriculture, as well as regional and international integration (RoR, 2012: 9).

6   These are gender equality; protection of environment and sustainable natural resources management, and science and technology, including ICT (RoR, 2012: 9).

7   The first (EDPRS1) was from 2008 to 2012 and the second (EDPRS2) from 2013 to 2018 (RoR, 2012; RoR, 2013c).

8   Including health, education, transport, poverty reduction, social protection, rural development, green energy production, decentralisation of government services, environmental management and protection, commodity exploration and mapping, government institution-building, climate change coping/mediation, private sector development, as well as water and sanitation (RoR, [n.d.]a).

9   Including agriculture, housing, land development, green building, reforestation and forest protection and management, infrastructure, trade, industry and tourism, private sector as well as cooperative development programmes and plans (RoR, [n.d.]a).

all other plans must be prepared and implemented. While many avenues for the transformation process are targeted, including economic development, a key issue is an embrace of 'ordered urbanisation' and a desire to make the country's urban areas 'more functional and liveable'.[10] While these plans place a strong emphasis on Kigali, where half of the country's population is concentrated and where a comprehensive EuropeAid-financed study into the demand for, and supply of housing in the city between 2012 and 2022 was done (Planet Consortium, 2012; Lloyd Jones, 2017: 34), it also extends into the 'green/sustainable development' of six secondary cities in the country[11] (Turok, 2019: 224; Lloyd Jones, 2017: 35; Mohd Sharif, 2019).

In order to optimise the little land that the very densely populated country with its estimated 12.6 million people has,[12] a National Land Use Plan was prepared to ensure 'optimal utilization' of land in urban and rural areas[13] and provide for the phasing in of higher density housing over the course of the next three decades (RoR, 2012: 11, 13; UN, 2019a: 5; Mohd Sharif, 2019; Planet Consortium, 2012: 32-34). It was also envisaged that Urban Master Plans would be prepared for every town and city in the country. While the implementation of these plans would be coordinated from the centre, the actual work of city development and management would be done by capable,

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10   Key among these, from the perspective of settlement planning, are the Urbanisation and Rural Sector Strategic Plan 2018-2014 and the National Urbanisation Policy, with the latter based on four pillars, namely coordination, densification, conviviality, and economic growth (Mohd Sharif, 2019: 1).

11   These cities (Rusizi, Rubavu, Musanze, Nyagatare, Muhanga, and Huye) are being developed in a planned way and through large investments, infrastructure and social services as part of a national network to connect the urban to the rural parts of the country (Turok, 2019: 225; Lloyd Jones, 2019: 34).

12   This is the most recent 2019-estimate of the United Nations (2019b). This figure is set to grow to 23 million in 2050 and to 33.4 million in 2100 (United Nations, 2019b).

13   Densities in rural Rwanda are very high, putting extreme pressure on the land and diminishing the prospects of making a living off the land (Lloyd Jones, 2017: 34).

well-run municipalities working in tandem with local communities and investors well-connected to local structures and organisations (RoR, 2012: 13; Turok, 2019: 225). This style of grassroots engagement is common in planning throughout the country, with communities extensively involved in such endeavours (Turok, 2019: 225; Mohd Sharif, 2019; *Times Reporter*, 2007).

In contrast to many African countries, Rwanda actively supports urbanisation "as a vehicle to accelerate transformation from an impoverished rural society to a prosperous modern economy", where social and education services can be provided more readily, more affordably, and at scale (Turok, 2019: 224-225; Mohd Sharif, 2019). In 2015, it produced the National Urbanisation Policy that advocates for coherent sectoral policies. The core principles that guide the policy include sustainability and resilience; integrated and participatory planning; sustainable land use, and appropriate tools for urban management (RoR, 2015: 18). A "healthy environment" is viewed as one that enhances the quality of urban life, and in which existing informal settlements are upgraded and new ones are prevented from arising (RoR, 2015: 32-33).

Progress on implementation of the country's many plans and programmes is structured under three clusters (Economic, Governance and Justice)*,* and is meticulously monitored and managed from the centre, with Detailed Progress Reports prepared on each strategy, plan, and programme (RoR, [n.d.]b). Government officials are also bound by a detailed personal contract with the President, called *"Imihigo"*,[14] which is aligned with the strategic objectives of the central government (World Bank, 2019: 3).

In order to fund its plans and investments in infrastructure, technology, and education, and to provide social and healthcare

services, the government had to borrow extensively and also make use of foreign assistance. Through the success of these investments and the resulting rapid growth of the country's economy, the government has been able to fund roughly 84% of its expenses from domestic sources – up from 36% two decades ago (World Bank, 2019: ix; Turok, 2019: 222; Lloyd Jones, 2017: 34). Major hindrances to economic development include the fact that, since Rwanda is landlocked and lacks a quality road and railway grid, it is dependent on other countries, primarily Kenya and Tanzania, for ports, harbours, roads, and railways for exports and imports (RoR, 2012: 5-7, 14; World Bank, 2019: xiii).

Much has been written about President Kagame's government, the style of which some perceive to be dictatorial and highly interventionist. Concerns have also been raised about his amendment of the Constitution in 2015, allowing him to run for election in 2017 and remain in power, possibly until 2034 (Turok, 2019: 222-223). It has been reported that he believes that rapid and sustained economic development is imperative to full reconciliation and lasting peace in Rwanda and something he has to accomplish during his tenure – a mission that has earned him the labels of 'a doer', 'an implementer', and 'a visionary' (Mohd Sharif, 2019; Turok, 2019: 222).

In addition to this, the country's ambitious plans for reconstruction have been criticised for their Master Plan style, 'their disconnect from realities on the ground', their blinkered pursuit of international trends and fads such as 'smart and eco-cities', glossy hotels and conference facilities, and their control-centred mode of implementation that has left little room for question or critique (World Bank, 2019: xiv-xv; Lloyd Jones, 2017: 36). There is, however, also writing that argues that, while these concerns are not without merit, there is a lot more to the eye than what writers looking in from the outside are aware of (Turok, 2019;

Mohd Sharif, 2019). A common question posed is whether there was any choice, any other way to move forward from the deeply fractured and desperate situation in which the country found itself in 1994. Would the institution of a less centrally driven, more decentralised form of government, planning and investment with a possibly slower pace of economic growth as outcome not have resulted in the creation of conditions, in which factionalism and strife would have returned and civil war very easily have broken out again (RoR, 2012: 24)? The Rwandan government has alluded to its success being "the result of a collaborative effort between Rwanda and our partners. It is a demonstration of what can be achieved when we give value to ourselves and the work we do, when we strive to find solutions from the strengths of our culture" (RoR, 2012: i, 22). Of major importance in this regard is the positive sentiment that the success has fuelled among the population, as noted in the Rwandan government's 2017-2024 Seven-Year Government Programme: "The progress made in less than two decades has given Rwandans much hope and belief to aspire for greater achievements" (RoR, 2017: 7). Besides the official opinions, the literature refers to the use of bottom-up processes, the extensive involvement of communities and the private sector, the responsiveness of the government to local needs and opportunities, and the social cohesion, active citizenship and sense of common national purpose inculcated by the government (Turok, 2019: 222-224).

Despite all the planning and the focus on alignment and targeting, there are suggestions that "there is scope for greater consistency and alignment between top-down and bottom-up processes in order to improve the suitability and responsiveness of national policies and practices to grassroots realities" (Turok, 2019: 221, 225-226). In the area of urbanisation and city building, it has been argued that the

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14   "Imihigo" is "an ancestral cultural practice relating to performance contracts" (Think Tank Initiative, 2017).

country requires, in addition to its 'state-of-the-art plans and planning tools', far more built-environment professionals than it currently has and far more investment in developing the national infrastructure network and strengthening urban-rural connectivity, especially around the six secondary cities (Lloyd Jones, 2017: 36; World Bank, 2019: xv).

2.2 The Netherlands

At the end of World War II in 1945, the Dutch economy was in tatters, with 60% of its productive capacity destroyed, its population close to starvation, more than half a million of its housing stock of 2.2 million units either destroyed or damaged, and a housing shortage of over 250 000 units (Sutcliffe, 1996: 264; Bosma & Wagenaar, 1995b: 237). In order to effectively and efficiently undertake the massive reconstruction task that was required, the reconstruction process was cast as a 'massive technocratic exercise' (Faludi & Van der Valk, 1994: 88). A central Ministry of Public Works and Reconstruction was created, with an engineer as Minister. He not only had powers that allowed him to overrule municipalities in the process of reconstruction, but he also had access to a considerable body of 4 500 public servants in a central entity called The Reconstruction Service that had already been established during the war (Bosma & Wagenaar, 1995b: 235; Faludi & Van der Valk, 1994: 88).

This arrangement lasted until June 1950, when the Reconstruction Act was passed (see below). This returned most of the emergency powers of national government to the municipalities (Koninkrijk der Nederlanden, 1950). Funding for reconstruction, however, remained a centralised function, with the national government retaining a leading role in all reconstruction actions. The Reconstruction Service was also closed down in June 1950, and most of its staff absorbed in a newly created Central Directorate of Housing and its branch offices

in the provinces (Faludi & Van der Valk, 1994: 90). Simultaneously, an Act on Cooperative Government was passed to coordinate and integrate the reconstruction actions of all national, provincial, and municipal government entities and actors (Bosma & Wagenaar, 1995c: 278).

While national reconstruction was regarded as a comprehensive, all-encompassing exercise, the Dutch central government accepted that its primary concern after the war was to first rebuild the country's economy, and only after that process was underway, to focus on the reconstruction of towns and cities and provide housing.

The first step in this regard was the passing of the Reconstruction Act in June 1950, which contained important initiatives such as the preparation of Reconstruction Plans by municipalities for the whole, or for parts of their areas of jurisdiction. These plans had to include damage and zoning maps, setting out which properties had to be acquired by the state to give effect to the plan, and detailed development/building instructions/regulations. Written comments or objections to these plans were provided for. While the Act empowered municipalities to prepare such plans, their final approval still lay with the Minister of Reconstruction and Social Housing. The Act also provided for expropriation of land and buildings by municipalities, but applications for expropriation had to be approved by the responsible national minister after public inspection, input and objections, with the Act also prescribing a set route to determine a fair amount as compensation in cases of expropriation. In addition, a national building programme had to be prepared by the responsible minister, which had to set out all the building actions that were scheduled for a calendar year in the country. Only construction provided for in the national programme was allowed, and contravention was a punishable offence (Koninkrijk der Nederlanden, 1950; Sutcliffe, 1996: 25).

Once the legal and administrative machinery had been put in place, the actual process of mass settlement reconstruction and housing provision could begin in earnest, which it did in the early 1950s (Sutcliffe, 1996: 26). In this exercise, the planners, architects and engineers involved made extensive use of standardised layouts, building plans, and building materials, to a large extent driven by the need for speed in delivery, but also strongly influenced by the prevailing modernist paradigm of standardisation (Wagenaar, 1995: 41; Bosma & Wagenaar, 1995a: 52; Bosma & Wagenaar, 1995b: 237-238; Bosma & Wagenaar, 1995c: 272-273).

While there was broad-based political and public buy-in to the idea of reconstruction, and the necessary legislation had been put in place, and able officials deployed, there was one big headache – funding (Wegs & Ladrech, 1996: 66; Sutcliffe, 1996: 264). Already by 1947, The Netherlands had run into balance of payments problems, which was threatening the entire reconstruction project (Inklaar, 1997: 21). While 'Reconstruction Loans' were available from the then recently established International Monetary Fund (IMF) and the World Bank, and financial aid was provided by the United States of America (USA), these proved to be inadequate for the scale of the task at hand (Briggs & Clavin, 1997: 384, 390; Sutcliffe, 1996: 11).

The big game changer would come in the form of the Marshall Plan, officially called the European Recovery Programme (ERP), which was first proposed by the then United States Secretary of State, General George Marshall, in June 1947, in the form of an aid package to the value of roughly $20 billion that would be offered to all European countries (Briggs & Clavin, 1997: 390; Sutcliffe, 1996: 22; Inklaar, 1997: 19). The Marshall Plan was approved by the American Congress on 2 April 1948, and two weeks later, the first aid in the form of grain arrived in the Dutch harbour of Rotterdam

(Inklaar, 1997: 10). In total, The Netherlands would receive over $1.1 billion in aid from the USA. The plan was not only important for the Dutch 'reconstruction project' in terms of the financial injection it made, but also in the form of uniting the population as a collective responsible for making good on the confidence placed by the United States of America in their national pursuit (Briggs & Clavin, 1997: 390; Inklaar, 1997: 13, 32).

The Dutch reconstruction project was a huge success. By 1950, industrial production had grown to nearly 40% above 1938-levels (Sutcliffe, 1996: 24, 263; Bosma & Wagenaar, 1995b: 238, 241). In the area of housing and settlement redevelopment, some of the first emergency housing to be built shortly after the war was of low quality, but after the national government shifted its focus from the economy to housing and towns and cities in the early 1950s, this changed – the new housing stock that was provided at scale was of good quality, with the national housing backlog all but wiped out by the end of the 1950s (Bosma & Wagenaar, 1995b: 238-239).

2.3 Insights: Common themes

The two countries discussed provide useful insights that South Africa can potentially learn from many of the initiatives to undertake reconstruction and redevelopment. Eight such insights are briefly set out below.

2.3.1 Prioritisation and sacrifice

Both countries started off from positions of complete destruction, with a myriad of pressing needs that all demanded attention. Decisions were taken to commence with what were regarded as the most urgent for the country, and once these had been addressed, to move onto the next sets. In both cases, this entailed focused and targeted investment and spending, and not trying to pursue everything that had to be done simultaneously.

2.3.2 Clear national direction

In both instances, the national level of government passed legislation that granted it extensive powers to prepare plans and undertake national reconstruction and development planning and investment. The plans clearly articulated what goals were to be pursued and achieved by when, how this was to be accomplished, and by whom. In The Netherlands, consensus-reaching by all the main stakeholders was viewed as paramount, attained by high-level agreements between government, unions and organised business on primary national objectives. These provided the framework for planning by the national government. In Rwanda, broad-based stakeholder and community engagement is part of national planning and is considered crucial in ensuring commonality of purpose and support for the national plans. In both cases, once agreements had been reached and national plans had been prepared, these became blueprints for the realisation of the set objectives. While they allowed for sub-national planning and the preparation of plans, this had to be done within the framework provided by the national scale plans, and in support of the national objectives. Planning, investing and spending outside these parameters were not allowed.

2.3.3 Visionary, principled leadership complemented by action

In Rwanda and The Netherlands, the highest office bearers provided visionary leadership and set ambitious targets. They saw it as their duty to lead their countries out of the conditions they were in and to serve only this cause. Both sets of leaders also made good on many of their promises – putting words into action and delivering results for the people, namely improving their living conditions, bringing stability, and keeping their hopes for a better future alive.

2.3.4 A capable state with dedicated institutions

A common theme is that visionary political leadership and lofty promises and plans without a capable state machinery to back up these plans and give effect to them is both useless and dangerous. Hence, both countries established strong, well-staffed and capable central bodies that were tasked with the overall planning for national reconstruction and development, coordinating and aligning all state and non-state planning, budgeting and investment and monitoring, and reporting on progress in this pursuit.

2.3.5 Respect for, and use of technical expertise

Both cases demonstrate an appreciation of the importance of technical expertise, from plan preparation and budgeting to implementation and delivery on the ground. There was no room for error, and no compromises were made as to the use of competent professionals to undertake complicated tasks. In the case of Rwanda, foreign service providers filled the gaps in expertise in the country.

2.3.6 Discipline

Leaders in both countries had no illusions that plans and good intentions, even in the hands of capable people, could go wrong if there is no clarity on the behaviour that is required to ensure the desired outcomes. This is not simply about specifying the required behaviour, but also about monitoring it and speedily and effectively attending to transgressions. What is clear in both cases is the realisation that, with new institutions in the making, extreme care had to be taken to ensure that self-serving behaviour was not condoned, but punished, to ensure that 'the wrong institutional culture' had no chance of setting in and destroying the soul of the new-state-in-the-making.

2.3.7 Foreign aid/assistance

Neither The Netherlands nor Rwanda had the enormous funds that were required to fulfil their reconstruction needs and objectives. They sought international aid and foreign investment to supplement their limited resources. Both countries also realised that they needed to provide safe havens for foreign investments, and demonstrate to those they were targeting for foreign aid that they were 'good for it' – in other words, that they were disciplined, that they did not tolerate corruption and theft of public funds, and that the money was to be used for the purposes for which it had been requested.

2.3.8 Sustained popular support

While the reconstruction efforts in both countries were driven from the centre, and only allowed sub-national manoeuvring within the parameters set, there was a clear understanding that 'the people' had to be engaged and consulted in the reconstruction process, and constantly informed of progress made, to ensure their continued support. Both cases also demonstrated an appreciation of the importance of 'positive messaging', and the well-planned and effective use of the media and national events in this endeavour.

3. RETOOLING THE SOUTH AFRICAN INSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

Early in South Africa's new democracy in 1994, President Nelson Mandela provided the visionary leadership to move from a nation scarred by injustice to a 'rainbow nation', where all would work together for a better future for all. An advanced Constitution provided the values of accountability, transparency and non-racism, institutional structure, and human rights for all. Government took its task of rebuilding the country seriously, with one of its main projects being rural land reform. This promising start was ruined by Jacob Zuma's disastrous presidency that was marred by corruption and

'state capture'. Renewed hope was placed on the shoulders of President Cyril Ramaphosa, but political infighting and factionalism have flawed the start of his presidency, perpetuating the paralysis introduced by his predecessor. Nevertheless, in his 2019 State of the Nation address, President Ramaphosa declared that faster economic growth requires accelerated land reform and that government would fast-track efforts to identify and release public land suitable for smart, urban settlements (RSA, 2019a: 15). The inclusion of urban areas in the land reform agenda marks a significant move away from the emphasis on rural land reform, putting the focus of the debate on 'urban land reform', where large tracts of well-located land for urban development are required for developing sustainable human settlements (Simkins, 2019).

The major South African constitutional, legislative and policy planning frameworks and mechanisms that can be employed to realise the objective of developing sustainable human settlements post-expropriation of, or acquisition of land, are introduced within some of the insights extracted from the two international examples discussed.

3.1 Constitutional aspects

Land reform is restricted to the three categories of land reform, namely 'land redistribution', 'land-tenure reform' and 'land restitution', as included in the Constitution sections 25(5), (6) and (7) (RSA, 1994a). As a result, it is mainly focused on rural land and does not adequately deal with urban 'land development' (Pienaar, 2014: 456-459; 647-648). The PVA now includes 'land development' in its definition of land reform, but does not define it (RSA, 2014). However, a useful definition is found in the Spatial Planning and Land Use Management Act No 16 of 2013 (SPLUMA), where 'land development' includes "the erection of buildings or structures on land" (RSA, 2013; Pienaar, 2019). This means that land can now be expropriated for

land reform purposes that entail development. Hence, urban land reform can be accelerated.

The development of sustainable human settlements in South Africa requires the interaction and cooperation of all three spheres of government. Although each sphere has the autonomy to exercise its powers and functions within its own area, the powers and functions do not operate in hermetically sealed compartments, and there are links between them (Humby, 2015). However, these links are often not properly understood. Practice shows that a silo-approach is still being followed. This misunderstanding results in a negation of the directive that all spheres of government must apply principles of cooperative government (RSA, 1994a: s41). Without a large measure of cooperation, the effective development of fair and viable human settlements is not possible.

The lack of effective legislation on cooperative government seriously hampers cooperation, the reason being that the Intergovernmental Relations Framework Act 13 of 2005 (RSA, 2005) has not delivered on the ideals of section 41 of the Constitution (RSA, 1994a). In the present self-serving political climate that pervades all levels of government, cooperation is anything but a priority. What is clear, particularly from the comparative insights obtained, is that in any concerted effort to deal with urban land reform, all spheres of government must work cooperatively, and not merely with one another, but also with the other role players, especially affected community members.

3.2 Legislative context

In line with comparative practice, the ideal is to have stand-alone legislation that specifically targets the development of sustainable human settlements. In The Netherlands, the legislation was the Reconstruction Act and in Rwanda it is Law 10/2012 Governing Urban Planning and Building. In South Africa, the

existing land-reform legislation has not significantly delivered on what was initially planned, as it is geared towards rural land reform and the three categories of land reform are too narrow to cover the development of sustainable urban settlements (UWC, 2016: 7). With urbanisation on the increase, programmes that tackle urban land reform are sorely needed. While there are a few statutes that can play a role towards implementing a programme or plan of action for this task, there is no statute designed to specifically tackle urban land reform. What is required is to look beyond the existing land-reform legislation and find other ways of dealing with urban land reform, where both land and settlement development are crucial components. A useful starting point is to examine what is presently on the statute book, where the *lacunae* are, and how these can be addressed.

SPLUMA is one of the most important statutes outside the land-reform legislation that targets the planning aspects of land use. Essential to all frameworks, schemes and procedures is the principle of 'spatial justice', emphasising that past spatial imbalances must be redressed through improved access to land (s 7(a)). Provision is made for national, provincial, regional, and municipal Spatial Development Frameworks (SDFs) that must all include previously disadvantaged areas, informal settlements and landholdings of state-owned enterprises and government agencies. SPLUMA stresses that their inclusion and integration into the spatial, economic, social, and environmental objectives of the relevant sphere/region, as well as historical spatial imbalances in land and settlement development, must be addressed (SPLUMA s 12(1)(h)-(i)). In this regard, the National SDF should provide strategic direction and policy guidance on addressing the persisting problem of historical national spatial imbalances and the upgrading of informal settlements. Municipal SDFs would, in turn, then identify the designation of areas where incremental upgrading approaches to development and

regulation will be applicable, where more detailed local plans must be drawn up, and where shortened land-use development procedures may be applicable (SPLUMA s 21(k)-(l)).

SPLUMA states that land reform must be dealt with in municipal land-use schemes (SPLUMA, s 12). It specifically directs land-use schemes to include provisions that permit the incremental introduction of land-use management and regulation in the same areas as those specified for SDFs, as well as areas not previously subject to a land-use scheme (SPLUMA s 24(2)(c); Nel, 2015).

While the enactment of SPLUMA was a necessary and enormous shift away from the past planning system characterised by inequality, unsustainable settlement patterns and fragmentation, and it provides many opportunities to address urban land reform and development, it has, since coming into operation in 2015, shown few signs of translating these opportunities into practical gains. Executive responsibility for SPLUMA lies essentially only with the Department of Agriculture, Land Reform and Rural Development. Implementing a national Act aimed at creating sustainable human settlements cannot be left to a single department; it requires sustained, enforced large-scale intergovernmental cooperation and strong, centralised governance.

Against the background of intergovernmental cooperation and centralised responsibility, the Infrastructure Development Act No 23 of 2014 (RSA, 2014a) could play an important role in enabling the development of sustainable human settlements. It aims to facilitate and co-ordinate public infrastructure development that is of significant economic or social importance to the Republic. It does so by identifying and implementing Strategic Integrated Projects (SIPs). 'Human settlements and related infrastructure and facilities' is listed as one of the SIPs in Schedule 1 to the Act. In principle, urban land reform, more specifically the development of

sustainable settlements would fit neatly into this SIP. Unfortunately, the 2012 National Infrastructure Plan, prepared to support the Act, all but ignores human settlements with the 2016/2017 Report on the plan, merely stating that 89 009 new houses were built (RSA, 2019c). The Act clearly targets other issues and it is unclear how it fits into the constitutional scheme of the allocation of specified legislative and executive powers to different spheres of government.

While these statutes contain the potential to address the development of sustainable human settlements, we are yet to see it happen in practice.

3.3 Policy context

More so than legislation, policy can play a significant role in addressing the creation of sustainable human settlements. It has done so, but not with sufficient success.

As early as 1994, in the run-up to the new dispensation, the African National Congress (ANC) produced the ambitious Reconstruction and Development Programme (RDP), which articulates the steps to be taken in redressing the imbalances of the past and redirecting economic development towards building a new, free and fair country and society (ANC, 1994). In the same way as its counterpart, Rwanda: Vision 2020, its focus was on major socio-economic issues such as poverty, unemployment, health, the provision of water and electricity, education, transport and, crucially, the construction of housing for the millions of South Africans who, due to the legacy of apartheid, could not otherwise afford it (ANC, 1994).

The RDP was translated into The White Paper on Reconstruction and Development, which encapsulated the contents of the original document. In a similar vein as the reconstruction programme of The Netherlands, it stated that "[d]ifficult decisions will have to be made, including the closing of programmes, in order to redirect resources and staff to RDP priorities" (RSA, 1994b: 16). In accordance with

this view, it introduced the idea of 'Transformation Plans', in terms of which all line function departments and provinces had to prepare five-year strategies, re-orientate their programmes, improve their efficiency, and enhance their use of resources consistent with the RDP. It called for the implementation of transformation strategies and systematic business planning exercises for each ministry, tier of government and parastatal institution, assisted by public enterprises, the private sector and NGOs. Both the original RDP document and the White Paper proposed the enactment of a "National Reconstruction and Development Act" that would set out the procedures that government and its agencies had to follow in complying with the implementation and reporting procedures of the reconstruction and development project (ANC, 1994: 140; RSA, 1994b: 17).[15] Where the introduction of the Reconstruction Act in The Netherlands was the catalyst behind the redevelopment of the country, it is unfortunate that in South Africa such legislation, while mooted, never saw the light of day.

Whilst the White Paper contained many of the ideals of similar initiatives as in Rwanda and The Netherlands, its implementation has been far from effective. Despite the fact that millions of RDP houses have been built, the housing crisis has still not been resolved. The history of RDP housing also reveals worrying levels of corruption and mismanagement in state social services. The integration of the allocated housing areas into local and regional economies has generally not taken place, and the tendency of housing projects to perpetuate apartheid spatial planning is still noticeable. This amounts to a failure of progressive, integrated, and people-centred development envisioned by the RDP, where everyone works together. A serious rethink is urgently needed (Bailey, 2017).

15 The RDP document also called for the passing of provincial "Reconstruction and Development Acts" (ANC, 1994: 140).

Chapter 8 of the National Development Plan 2030 (NDP) entitled "Transforming Human Settlement and the National Space Economy" reiterates the RDP's goals of breaking down apartheid geography, building more compact cities, providing decent public transport and the development of industries and services that use local resources and meet local needs. It recognises the tension that exists between the immediate necessity of addressing the housing backlog and the longer term need to create well-functioning, high-quality human settlements that offer greater opportunities for income-generation and human development (RSA, 2012: 260, 270). However, instead of prioritising what is required, it puts forward an impossibly detailed list of recommendations to reform the planning system. Consequently, it is difficult in the extreme to prioritise and implement. In that regard, the recent calls by the National Planning Commission to review aspects of the NDP are to be welcomed (RSA, 2019b). Part of such a review should include the prioritisation of the most urgent issues; the introduction of clear coordination and integration processes and implementation measures; specifying and adhering to timelines; and ensuring that reporting on progress is done by capable, well-run municipalities working together with local communities, structures, organisations and investors. South Africa can take its cue from Rwanda in this regard.

The Integrated Urban Development Framework (IUDF) is designed to promote inclusive, resilient, and liveable cities and towns. It builds on various chapters in the NDP and extends Chapter 8. One of its aims is that, by 2030, South Africa will see meaningful and measurable progress in creating more functionally integrated, balanced and vibrant urban settlements. Its Policy Lever 3 aptly states that integrated and sustainable human settlements are needed to create more humane, environmentally friendly and safe living and working conditions. A number of short- to

medium-term policy priorities are identified, including the finalisation of the Human Settlements White Paper; accelerating the upgrading of informal settlements; prioritising the regeneration of inner cities; redeveloping townships; developing a national policy on inclusionary housing; and fast-tracking land for settlement interventions (RSA, 2016a: 63-67). A large contingent of key actors is identified who must collaborate to reshape the built environment within municipalities. The IUDF also identifies all the issues that must be urgently addressed, but being a policy, it contains no implementation measures or timelines, and it is foreseen that the urgency with which South Africa must address these issues will disappear in the rhetoric.

One of the ways to get the establishment of sustainable human settlements off the ground at scale and at speed is to upgrade existing informal settlements. Informal settlements are often relatively well-located in terms of access to economic opportunities, transportation, and social facilities. They are essential in providing access to the city, especially for the very poor (Royston & Ebrahim, 2019). They also include informal, yet locally institutionalised and respected arrangements on land governance, activity routes, internal neighbourhood blocks, locally designated land for social use, open space and economic activity. These provide markers for future layout planning that should be respected (Anciano & Piper, 2019).

Until 2004, government had no dedicated policy instrument for informal settlement upgrading. In September 2004, cabinet approved the comprehensive plan for sustainable human settlements or Breaking New Ground (BNG) (RSA, 2009). Its objectives are to alleviate poverty, promote economic growth, improve the quality of life of the poor, create an asset for the poor, and develop sustainable human settlements. In terms of BNG, the concept of 'sustainable

human settlements' refers to "[w]ell managed entities in which economic growth and social development are in balance with the carrying capacity of the natural systems on which they depend for their existence and result in sustainable development, wealth creation, poverty alleviation and equity".

While its aims are laudable, BNG has been criticised for its lack of clarity on its strategic direction and "for appearing confusing and disappointing" (Charlton & Kihato, 2006: 252-282). However, it did result in an important initiative – the Upgrading of Informal Settlements Programme (UISP). The UISP explicitly calls for a 'paradigm shift' and puts forward a radically different approach to deal with informal settlements. It provides a good policy framework to improve the lives and livelihoods of people living in informal settlements by providing secure tenure and access to basic services and housing. However, implementation has not been satisfactory, because the relocation of informal settlements to vacant land far from cities and work opportunities remain common practices among municipalities. As a result, long-established community arrangements, agreements and organisations are erased and relocated residents are often in a worse position than prior to their relocation. Moreover, municipalities often fail in their duty to undertake upgrading projects (RSA, 2016b).

Despite the misgivings about the UISP, its implementation must be accelerated. Of all the legislative and policy initiatives, the UISP can best address urban land reform by facilitating the creation of safe, viable, and sustainable human settlements. Priority should be given to areas that are suitable for tenure upgrading; the provision of municipal and social services and space for economic activities; as well as alternative housing and service-delivery models. This can be done by government officials, residents and local leadership structures working in a cooperative arrangement that

recognises and respects local norms and practices and the importance of dignity and a sense of belonging in the development of vibrant, safe and secure human settlements (Royston & Ebrahim, 2019).

4. CONCLUSION

Whilst no two countries are alike, it is useful to study countries where large-scale rehabilitation and reconstruction have taken, and are taking place. Lessons can be learned from the legislation, policies, plans, programmes and tools employed in such countries. As the research into the cases of Rwanda and The Netherlands in this article shows, only principled, visionary leadership can implement such a system. A theme that runs through both cases is the need for a clear vision that is shared by all role players, of what the outcome of the reconstruction project is to be. Broad-based stakeholder and community engagement are at the heart of any attempt to attain such a vision and to get goal-oriented legislation, programmes and policies off the ground. Together with that, the establishment of capable central bodies is imperative to undertaking the overall planning for national reconstruction and development. For such planning to be effective, and to attract and retain local and foreign investment, requires proper, planned implementation based on appropriate legislative instruments and workable policies.

South Africa has many pressing needs, but prioritisation needs to take place. Arguably, addressing our failing economy is a priority, but where and how one lives and works are at the core of human dignity - i.e. the foundational value in our Constitution. The development of sustainable human settlements must be one of the priorities, not only for the present generation, but also for generations to come. Many of the issues that really require urgent attention in South Africa also get lost in the detail, because prioritisation is lacking.

After prioritisation, an effective, well-considered programme of legislation and policy, supported by appropriate plans that are underpinned by constitutional principles, norms and values must enable action. Words cannot do the work. As a nation, we must jointly build our capacity; get to work, and be efficient, effective and dedicated to the cause.

South Africa has an array of legislation and policy that can start to address the issue. However, a more targeted approach that addresses our core needs is necessary. In addition to the proper implementation of existing legislation, South Africa needs a proper 'national spatial reconstruction act' supported by effective legislation on intergovernmental relations that guides and directs all national-level plans, strategies and frameworks; ties in the existing legislation and policy; and gives clear and binding objectives and instructions to provinces and municipalities. It must clearly describe what kind of national spatial configuration, space economy and settlements are required. Ultimately, this will drive and direct post-expropriation spatial reconstruction and settlement-building in which local and foreign investors would invest with confidence. Only then will we be able to reap the full dividend of land reform, namely the creation of equitable, viable, and sustainable human settlements for all.

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