

South Africans want land not State Ownership

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When debating policy, it is prudent to consider the long-term implications of our policies and not focus on personal attacks, which are more of personal feelings rather than an effort to improve standard of living of South Africans. Unfortunately, Floyd Shivambu of the Economic Freedom Fighters (EFF), used the pages to advance a personal attack rather than advancing a coherent land policy.

South Africa has serious challenges to deal with and cannot be consumed by personal insults. The ANC, since its inception, has advocated for land to be distributed to the people in whatever land holding the people choose. Also, as so eloquently summarised by Tembeka Ngcukaitobi in his latest book “Land Matters”, the ANC always favoured private property rights and only wanted to ensure that these rights to land are equitable redistributed.

Against this background, the freedom charter declared that the land would be shared amongst those who work it. The ANC government has restituted and distributed land to the people through various forms of land holdings, including freehold, leasehold, and communal landholding amongst others since 1994. [Estimates](#) by agricultural economists Wandile Sihlobo and Johann Kirsten place the areas of agricultural land that has been moved from white South Africans to government (and black land reform beneficiaries) by the ANC since government since 1994 at [15.56 million hectares](#). This is equivalent to 20% of formerly white owned land and closer to the initial 30% target of the governing party. This not say we should be complacent but it is indicative of relative progress.

These forms of tenure in this 15.56 million hectares are in line with the different preferences and unique situations of various communities and individuals in our society. It enables social participation in various forms, including communal, religious, cultural, sports, economic, etc. South Africa is a mixed economy hence the land holding must also reflect mixed forms to facilitate economic participation by various role players.

Our land problem is not characterised by a lack of state ownership, it is accentuated by the lack of ownership by citizens. Our people are not fighting for the state to own the land, they want own the land themselves. The State ownership model as favoured by the EFF does not address this problem.

In reality even those who are beneficiaries of land reform and the black people who have succeeded in buying land on their own means in the open market through the fruits of their labour would be deprived of their land under EFF’s model. There has been [over one million hectares](#) of such private transactions since 1994. It is because of these realities that as the African National Congress, we do not agree with the EFF’s land policy.

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With a stroke of pen, people in the townships like Soweto, Atteridgeville, KwaMashu, to name a few, will wake up being tenants of the State. They'll have to lease their land like they did under apartheid thereby being rendered perpetual minors of the State.

FACTS ON CHINA

Unfortunately, Shivambu, finds himself with the wrong set of facts on the Chinese Land ownership model. The reality is even a traditionally socialist country like China has recognised the need for a mixed land ownership regime. In 2004, The People's Republic of China amended article 13 of their Constitution, in terms of this article citizens' lawful private property is "inviolable." The same article also states: "[t]he state, in accordance with law, protects the rights of citizens to private property and to its inheritance." This a clear illustration that even socialist states recognise the importance of private ownership by citizens.

CUSTODIANSHIP

Minerals and water are two examples of state custodianship, here I traverse the mineral regime vs the land regime and why the mineral regime cannot be applied copy and paste to land ownership. Under our common law and the previous mining legislation, minerals were owned by the owner of the land unless they had been separated and transferred to another person. The State regulated the exploitation of those minerals by granting licences and permits to prospect for them and to extract them. The owner did not have the right to prospect or mine without the necessary licence or permit.

The Mineral and Petroleum Resources Development Act (MPRDA) changed this by stating that "*Mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.*" The private ownership of minerals in the ground came to an end, subject to certain transitional arrangements. The State now allocates rights to prospect and mine by granting mining rights, prospecting rights etc. This deprived landowners of ownership of the minerals in their land but those rights had always been limited in the sense that no owner had the right to obtain any benefit from those minerals unless they were granted a permit or a licence by the State.

The consequences of the new system were considered by the Constitutional Court in *Agri SA v Minister for Minerals and Energy*. The appellant (Agri SA) contended that the changes brought about by the MPRDA resulted in an expropriation of ownership of the minerals, and that the landowner was accordingly entitled to compensation. Ruling in favour of the Minister, the Court held that an expropriation only takes place when the State acquires the substance of what was deprived, for a public purpose or in the public interest. When the Act came into effect; the State did not acquire the entitlement of the appellant to sell or lease or sterilise the rights. There was therefore no expropriation.

FLAWED ANALOGY

There is a fundamental flaw in the analogy between minerals and land in this context. Owners have never had the right to extract minerals from the land which they own, as they wish. The right to mine has always been subject to permits by the State. In contrast, the owners of land have always had the right to use it as they think fit, subject of course to government regulation with regard to (for example) land use and environmental matters. Only a very limited class of

people have had ownership of mineral rights, and were affected by the MPRDA. By contrast, for millions of South Africans, the land which they own is a substantial part of their assets, and a guarantee of security of tenure. They would be deprived of that by the abolition of land ownership, arguably without any right to compensation, because the State would not be acquiring ownership of the land.

Mineral or water rights are vastly different to land on the surface. Minerals and water are consumable and the state must ensure that one person's use does not detrimentally affect another's. In contrast, land is perpetual and there is sufficient land in South Africa for all. Unfortunately, state custodianship over water has shown that it is not necessarily a shortcut to achieving equitable access by all. The state must simply ensure that access to land is equitable. It is furthermore possible to vest custodianship over minerals without passing ownership because there are no title deeds to begin with. But that is not the same with land, which is regulated by title deeds. Once you interfere with the rights of an owner with a title deed, that will be an expropriation which immediately attracts the compensation provisions in respect of owners with title deeds. There were no title deeds over minerals, these were also vested on land owners. The people deprived of ownership would include every landowner, including (for example) those people who have obtained restitution of the land which was taken from them by apartheid.

WAY FORWARD

We must promulgate the plethora of secondary legislation under section 25 of the Constitution. The Expropriation Bill is needed to set circumstances under which it may be just and equitable to expropriate land at nil compensation in the public interest.

A Redistribution Bill is needed to govern the acquisition and distribution of land. How will the land be distributed amongst those who need it? The high level of land hunger and to facilitate women and youth participation in the economy distribution of land on a need basis is paramount. An accessible Land Court is required to adjudicate any land dispute.

We also need to be active with redistribution of urban, peri-urban land and housing to the 70% of our population that is now urbanised. The lack of coordination between Department of Human Settlements, Provincial and the Local government in the large Metros should be addressed urgently.

We should provide security of tenure to communal land holders through upgrading of the land tenure rights of rural communities. One of the suggestions from the high-level panel was to create a system for the registration of Permission To Occupy rights the same way title deed is registered.

Wholesale state ownership does not guarantee security of tenure it diminishes it significantly. The land ownership question must be addressed in a way which further enables our people to participate in the social, economic and political life of the nation anything less will be a failure to progress.