

# Solution to land crisis lies in the constitution

The constitution obliges the state to take reasonable measures 'to enable citizens to gain access to land on an equitable basis'

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The ANC dances, as a recent headline has it; Gwede Mantashe wants to do something about the zama-zamas but doesn't know quite what; the EFF still punts the failed old soviet model aided and abetted by the Marxist moles in government who have withheld title deeds from land reform and restitution beneficiaries for the past 20 years. And the private sector slams as sabotage of the constitution the ANC's latest move to give the executive the power to determine compensation for expropriations.

Ironically, the ANC elder heading the parliamentary sub-committee has a doctorate in law and probably knows better but has decided to play along with the next act in the ANC factional charade. Both he and the private sector are no doubt hoping the national prosecuting authority will one day wake up and, like a fairy godmother, wave a wand and end the charade by putting villains behind bars. But even if that happens and the courts throw out the current bill (the 18th amendment to the constitution) and some economic reforms facilitate a modicum of growth, that will not be enough. The land issue will continue to fester until the historical injustice of SA land ownership is fully addressed, as it should have been long ago in terms of section 25.5.

We can issue title deeds to all land restitution and reform beneficiaries still working their land, but that still won't be nearly enough. We can provide title deeds to those township dwellers who should have received them long ago, which will empower them but still won't help the landless. Commercial agriculture can expand its commendable mentorship and ownership facilitation programmes, but that still does not go to the root of the problem. Even continuing the land restitution and reform programmes, with proper facilitation of production by the beneficiaries, will not be nearly enough.

What is needed is something that addresses, once and for all, the fundamental inequity of our situation or, as Cyril Ramaphosa put it, the "original sin" of massive, and centuries old, land dispossession. None of this will come near giving effect to the preamble to the constitution which states that "SA belongs to all who live in it." Unless we genuinely set out to achieve this we are fooling ourselves, merely playing charades like the ANC.

So, no, this does not mean EFF style, or any other form of, nationalisation. But it does mean that if we want to give effect to the constitution, which provides both for the empowerment of the dispossessed as well as the protection of minorities, that we heed what it says. We need to note that to give effect to the words of the preamble section 25.5 obliges the state to take reasonable measures within its available resources “to enable citizens to gain access to land on an equitable basis”. Well, since it is patently obvious that even if reform and restitution had been optimally managed for the past 20 years land would have remained a ticking time bomb, let’s see what the constitution really is telling us to do.

This may seem a little out-of-the-box, but that is sometimes what pure reason and a touch of “when all else fails” desperation drives us to. Right up front the constitution tells us SA belongs to all who live in it. It doesn’t say nationalise land, but it does say do something about providing equitable access for all. Yes, reform, restitution and pro-active commercial agriculture initiatives are indispensable elements of the solution. What is missing is the simple act of the owners charging rent on their land. All countries that have tried getting revenue from land instead of taxing labour, capital and consumption, have prospered. Think Hong Kong, Singapore, Taiwan and (19th century) Japan.

In any event, it stands to reason that if you charge land value rentals and lower tax, inefficiently used or speculatively held land will either be developed or come to market. So you have a double whammy: land becomes more affordable and the economy gets a kick-start. It then gets better: as taxation gradually reduces and land rent rises those areas with minimal locational advantage (read vast swathes of our rural areas and former homelands), which have been taxed out of business, can resume normal economic activity. Absent ruinous retrogressive VAT and insane fuel taxes, they get a further boost. In the urban engines of the economy these carrot and stick incentives are even more powerful.

In a way our economy is like that of New Orleans after Hurricane Katrina in 2005. Recovery languished for years as free rider property owners or speculators waited for municipal, state and federal money to get reconstruction going. In stark contrast, San Francisco, which was flattened in the earthquake of 1906, rebuilt itself immediately without waiting for outside help. The difference? San Francisco’s property taxes were based on land instead of buildings or a composition of both as in New Orleans. All property owners had the same incentive: they still had to pay the rates on their land so the sooner they rebuilt the better.

So collecting land rents in one way or another obviously has an enormously stimulating and incentivising economic effect. This is not rocket science. But far more important is this: moving from tax to land rent signals to the people of SA that they are immediately benefiting from their land as taxes and land access costs are lowered. Regardless of whether land owners are recent buyers, beneficiaries or settler descendants they are paying the people of SA the market rental on their land, thus facilitating lower taxes and the economic boom all yearn for. Not everyone will receive a plot of ground through the post the next morning, but together with properly managed reform and restitution processes, as well as private initiatives, they

will see and feel change and recognise that the original sin is being addressed. Just and equitable access to land will truly be underway at last.

What about the zama-zamas? As a proxy for land rent collection the gold mines tax formula was effective inasmuch as, simply put, it taxed richer mines at a higher rate than marginal mines which, if their operating margins were below 10%, paid no company tax. This made it easier for marginal mines to survive periods of low commodity prices while taxing richer mines at a much higher rate in boom times. In a general move towards land rent, however, it gets better since pay-as-you-earn and indirect taxes that now come off mines' added value, reduce towards zero. The net result is much more efficient use of the nation's patrimony as less ore is left in the ground to tempt zama-zamas. Together with rationalisation of over-regulation and BEE, a newly flourishing mining industry is not hard to imagine.

A full scale conversation at national level will be necessary to discuss the many implications of such far-reaching change, but there is one significant move that can be made immediately and would serve as a real-time pilot project. Revert to site value rating. Before the ANC decided, despite much advice to the contrary, to abolish site value rating in the Municipal Property Rates Amendment Act of 2004, Johannesburg had operated it highly successfully for four decades or more, during which time it rebuilt itself four times. Since then it has benefited from the Gauteng infrastructure (motorways and Gautrain) but the black jack farms (vacant stands) have proliferated as composite rating on buildings as well as land diluted the formerly powerful incentive of site value rating. It is asking for trouble to encourage the idling of so much of our most valuable land.

Along with many others, JPMorgan Chase's Jamie Dimon acknowledges that capitalism needs a makeover, and its failings are hardly news as the developed world struggles with puny growth and growing inequality. Tinkering and kicking the can down the road has got us nowhere. While the extent to which non-collection of land rent is responsible is food for a full debate, it has distorted the global financial and economic system and is indeed the root of the problem. However, circumstances do not afford South Africans the luxury of waiting for the developed world to wake up to this. We have been pitchforked into the crisis, which is at the same time a great opportunity.

Nearly 30 years ago I handed similar proposals to Tito Mboweni, who responded that "we shall review this". Until the ANC surfaced with elite-enriching BEE, it seemed this would be a no-brainer for his party to run with. Now that it, like the bankers' version of capitalism, has failed to deliver the goods, we cannot waste this crisis. The solution is underfoot!

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