

Debate on ensuring complete ownership to land reform beneficiaries and ownership to those living on trust land within communal areas.

By Roy Jankielsohn

Honourable Chairperson,
Honourable Minister,
Honourable Members, and
Fellow South Africans good day.

Thank you for the opportunity to lead this debate on an important issue regarding land in the National Council of Provinces.

Issues of land restitution, land reform and land tenure reform are not divorced from each other, but remain interlinked and must be discussed together in order to complete the somewhat contentious puzzle on the issue of land in South Africa.

Debates on the past and contemporary history on issues relating to land in South Africa emphasise our diversity. While some politicians abuse this to sow division and hatred, if discussed and managed in a mature and realistic manner, progressive land policies have the potential to become a source of development, food security and unity.

In his book “Feeding Frenzy The New Politics of Food” Paul McMahon correctly states that: **“especially in Africa, land has cultural, sentimental and political meaning. It is a reminder of past dispossession, a symbol of present dignity and a source of future security”**.

We must view land within its historical context, and in these discussions we cannot ignore the colossal upheaval, carnage and massacres during the Mfekane in the late eighteenth and early nineteenth centuries. Similarly, our discussions about land must also reflect on what Sol Plaatje referred to when he indicated in his political tract “Native Life in South Africa” that: **“Awakening on Friday morning, June 20, 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth”**.

This quote was referring to the notorious 1913 Natives Land Act. This Act was preceded by a history of race-based dispossession that includes the 1897 Zululand Annexation Act in the Natal Colony, the Glen Gray Act in the Cape Colony, an 1853 Volksraad resolution in the Transvaal Republic and a ban of freehold for black people in the Free State Republic.

And of course this was followed by the 1927 Native Administration Act, the 1939 Bantu Trust and Land Act, the 1937 Marketing Act, the 1946 Coloured Persons Settlement Act, the 1959 Promotion of Bantu Self-Government Act, and the 1971 Homelands Constitution Act to name but a few.

These prominent pieces of legislation only form part of the 60 racially discriminating laws passed between 1913 and 1948 and a further 161 between 1948 and 1991 that resulted in the uprooting of about 3,5 million South Africans of various races.

This is a short summary of the historical legacy that we inherited in 1994, and have had to grapple with since then.

I hope that the legacy that our children and grandchildren inherit from us will be a different one, hopefully one that is based on both redress for past injustices, but that constructively addresses the current national and international demographic, economic and food related realities.

The Restitution Act was implemented to deal with the constitutional imperative of land restitution, which allows individuals who lost their property as a result of post 1913 discriminatory legislation to submit claims for redress.

Redress through land restitution has been delayed by administrative backlogs in dealing with restitution claims by the state. Furthermore, the fact that about 92% of claimants opted for cash in the place of land should be an important guideline for policies relating to redistribution. The cash claims enable individuals, many of whom currently reside in urban areas, to purchase property and build homes and livelihoods in our towns and cities. This is also an indication of a realisation among restitution claimants that land in South Africa is not an instant source of wealth.

Without ignoring the words of Paul Mc Mahon that I quoted earlier, we must approach the issue of land in a manner that takes into account our current realities of rapid urbanisation, the need for food security and economic challenges with the only certainty being the uncertainty of an unpredictable future.

Land reform, what is also referred to as redistribution, and security of tenure are not restricted to rural areas, but should be an important part of our urban planning. In this respect we support policy proposals that will optimally enhance land usage and productivity in rural and urban areas. Such policy options must create an environment that is socially just and fair and in which existing rights are carefully aligned with our national objectives of redress through pragmatic, constructive and productive redistribution.

I have outlined the historical need for redress and would now like to deal with some important environmental and economic issues relating to land in South Africa.

A 2015 World Wildlife Fund - South Africa report indicates that while 69% of land in South Africa is estimated to be good for grazing alone, only 13% of land is arable (good for cultivation) and 3% is considered to be high potential agricultural soil. This implies that South Africa is not conducive for the type of agriculture envisioned in multi-beneficiary corporative land reform projects that government has tended to implement and are set up for failure.

How does our agricultural sector survive in a country that is not agriculture friendly? This is explained by Jeffrey Herbst and Greg Mills in their book “How South Africa works and must do better”, in which they state that: **“Like any other sectors, those who survive and prosper will be the better farmer, marketer and entrepreneur, improving yields and technology, and inserting themselves into local and global value chains”**.

Farming requires a combination of skills and expertise, capital, modern infrastructure and equipment, and of course land which may be owned or rented by agricultural entrepreneurs.

The success of commercial farming in South Africa is based on economies of scale which has resulted in about 20% of commercial farms supplying 80% of all food in the country. This is supplemented by small scale and subsistence farming.

Despite some incremental improvements over the past 27 years, equitable access to land remains out of reach for most South Africans. Untransformed historical spatial arrangements ensure the entrenchment of inequality. Approximately 17 million South Africans still live in the former homelands, which are in some instances on the most fertile land in the country.

Last week the DA Deputy Shadow Minister of Agriculture, Land Reform and Rural Development, Honourable Thandeka Mbabama, emphasised comments by the Ministry that citizens living on 10.5 million hectares of land in rural areas still live on property owned by apartheid-era institutions. This statistic, supplied by the Ministry, is an admission that the ANC-run government flagrantly violates the fundamental rights of rural communities to own their property, as stipulated in section 25 of the Constitution.

While the Constitution does not instruct the state to give everyone land. The Constitution instructs the state to foster conditions which enable citizens to gain access to land on an equitable basis.

Control over much of the land in communal areas vests in the state. Individuals and families occupying this land are subjected to various forms of land rights that are in most cases informal, uncertain, and vulnerable.

What can be done to remedy this situation and ensure that our rural populations have access to security of tenure, in other words to own their property?

Allow me to propose, among others a few of the most important DA proposals in this regard.

Firstly, we must create a proper land registry by surveying all currently unsurveyed land in communal areas. Understanding where the boundaries between properties are is the first step to improving tenure security.

Secondly, we must provide security of tenure through private title to all landholders who want it. This approach addresses the distinction between individual and communal title, as it would be up to landholders to decide for themselves whether they want to own the land individually, or

whether they want to form a Communal Property Association. However, if a landholder opts for individual rather than communal title, they must get it.

Third, include communal use rights, such as for grazing or accessing water points, as a condition in the title deed, as is already standard practice for servitudes in many other cases.

Fourth, couple the process of surveying and titling individual plots of land with an infrastructure needs assessment and development that focusses on access to roads, water, financing, training and mentoring. This will ensure that those private landowners who want to enter agriculture are able to do so successfully.

Fifth, undertake to protect the rights of beneficiaries to participate in the cultural life of the traditional community of their choosing. In other words, with the exception of assigning control over land ownership to private landowners instead of traditional authorities, all other rights of traditional authorities would remain undisturbed and protected.

Sixth, a comprehensive land audit needs to take place with a proper land registry. Provision must also be made for protection against predatory buyers through the provision of minimum land values by the Office of the Valuer-General.

These aspects will form part of a DA Private Member's Bill in this regard.

There is no provision anywhere in the Constitution that provides for any individual to be barred from owning property. In fact, section 25 – the property clause – makes it clear that “no one may be deprived of property” and that “a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws” is entitled to “tenure which is legally secure or to comparable redress.”

A recent High Court judgement indicates that people living on customary land under control of the Ingonyama Trust are the “**true and beneficial owners**” of that land. The court also found that the Minister of Agriculture, Land Reform and Rural Development has neglected her legal duty to respect, protect and promote these informal land rights.

The courts will similarly reject legislation that infringes on the Constitutional rights of individuals to own property and have such property arbitrarily taken away from them by the state.

The ANC's treatment of people in rural areas as second-class citizens by banning individuals from owning their land, violates these provisions of our Constitution, as well as the right to equality.

The Ministry confirmed that land remained registered in the name of the Apartheid state “**because no legislation currently existed to transfer land held in trusts by the government to rural communities.**”

As Honourable Mbabama correctly indicates: “**This too is nothing less than an admission of outright failure by the ANC to enact legislation to provide tenure security and ownership rights to rural citizens.**”

Contrary to its own Freedom Charter, the ANC-run government has been fixated on preventing people in rural areas from owning land and on expropriating current land owners, rather than focussing on land reform models that are based on redistribution and economic empowerment.

Venezuela and Zimbabwe are examples of where the legislated nationalisation of land and other property has devastating impacts on the economy and food security. In Venezuela the economy collapsed due to policies of nationalisation, which included expropriation without compensation, leading to massive famine. It was reported that by 2017 more than three-quarters of Venezuelans had lost an average of 12.5 kg in body weight due to national food insecurity and 61% of the population were going to bed hungry.

Similar policies regarding expropriation of land in Zimbabwe led to the collapse of the economy and currency, an unprecedented 90% unemployment, and famine. The many economic refugees in South Africa from Zimbabwe attest to this.

All economic and political commentators, as well as international precedent, indicates that giving a government powers to arbitrarily expropriate property without compensation creates economic uncertainty and new threats. Such threats include:

- An unwillingness by international investors to invest in a country in which their property rights are not secure and investments under legal threat of expropriation or nationalisation.
- The further capital flight and disinvestment that continues to shed jobs because of the policy uncertainty created by such proposals.
- The unwillingness to invest in agriculture and insecurity of banks who hold bonds on land. Agricultural economist, Wandile Sihlobo, indicates that agricultural debt was R187 billion in 2019 (Businesstech).

We must also acknowledge the high level panel report's conclusions that the failure of land reform is due to among others, corruption, the channelling of resources to the elite and the lack of support to beneficiaries of land reform. Coming from the Free State I can attest to this with the controversial and corrupt Gupta-linked Vrede Dairy project. This project was fraught with corruption, the rightful beneficiaries were side-lined for nine years and currently experience a lack of support that is required for their success. The fight against corruption and the rightful inclusion of the beneficiaries at the Vrede Dairy Project was a result of the DA taking the battle for justice to Parliament, the Legislature, the Public Protector, the Zondo Commission and the Courts.

Land redistribution in South Africa must be individual and family based with tenants and farmer workers given priority and support in order to give them access to the necessary markets and enable them to become active in the commercial farming sector. Property rights must be legally secure as envisioned by the Constitution.

Land redistribution must not be restricted to rural areas. Policies and legislation must make provision for inclusive urban development that includes residential, commercial, cultural and recreational land to cater for the rapid urbanisation that is a characteristic of modern societies.

When it comes to justice for our most marginalised rural and urban communities the DA will fight to free our people who are still enslaved in Apartheid-style property arrangements that the ANC continues to protect. Title deeds remain important instruments that empower individuals and groups towards wealth creation, and policy certainty regarding property rights are crucial in an enabling environment for job creating investment. In this respect the out-dated ideological rhetoric and legislative proposals from the ANC and EFF remain sources of poverty, unemployment and further inequality in South Africa.

The DA will also continue to lead the struggle for the protection and fair treatment of all our farmers and their employees who produce our food, create jobs and keep our rural economies going.

Our subsistence, emerging and commercial farmers are national assets who deserve the support and respect in our communities and the protection of their government.

The DA will fight for, and where in government create, opportunities for new and previously marginalised entrants into the rural land and urban property markets through preferential funding arrangements, adequate training and support to maximise usage and productivity in line with their intended purposes.

With a stagnant economy and pressing social needs, South Africans cannot afford another electoral experiment with an ANC government that has a track record of self-enrichment at the cost of the most marginalised and poor in our society. The DA's track record of clean and good governance, sound service delivery and pro-poor policies will place DA voters on the right side of history in 2024.

I thank you.