

WHAT IS THE LAND QUESTION?

The land question in South Africa relates to the reversal of a centuries old systematic and structural process of land dispossession, through which African people were chunked out of their land, for the benefit of a tiny minority of white people.

This systematic process of land dispossession from Africans was unequalled anywhere in Africa. In Zimbabwe for instance, colonialist appropriated to themselves just over 50% of the land surface in that country. In South Africa, they took over about 87% of all the land surface from black people through colonial dispossession and through legislative mechanisms.

The land question therefore is about the resolution of this great land dispossession injustice, and seeks ways to ensure that large-scale redistribution of land does contribute to the redress of colonial and apartheid injustice, the transformation of the economy and the reduction of both urban and rural poverty.

WHAT IS THE HISTORY OF LAND DISPOSSESSION IN SOUTH AFRICA?

- In 1652, Jan van Reibieck established a Dutch settlement on behalf of the Dutch East India Company. Over time, the Dutch seized the land from the Khoi and from the San, in order to increase their land for grazing.
- Deprived of their land from which they derived their livelihood, the Khoi and the San were forced to work for low wages for their dispossessors.
- The British took over governance of the Cape Colony in 1795, and again in 1806 and began a rapid and brutal process of colonial expansion, underpinned by dispossession which they had already started elsewhere in the country.
- The British led colonial wars almost decimated Xhosa speaking people in the Cape Colony, and spread its tentacles to every corner of the country, sowing seeds of terror and murder. The consequence was that by the beginning of the 20th century, African people in this country had very little land to call their own.
- After Africans were defeated through the wars of dispossession, the colonial regime began to develop legislation to cement forever the subservient role of African people in their own land.

WHAT WERE THE COLONIAL AND APARTHEID LAND LAWS OF DISPOSSESSION?

- **Glen Grey Act of 1894:** This Act introduced a labour tax for young African men who were not working, with the sole intention of forcing them to work on white farms and in the mines. It was implemented first in the Glen Grey area (Lady Frere and Queenstown), and its application was later extended to large areas in the Cape Colony. It also developed the idea of African native reserves. Cecil John Rhodes called it “a Bill for Africa”, and the purpose was to keep Africans in tiny pieces of land, so as to force the rest to go work for whites in the mines and in the farms.
- **Natives Land Act of 1913:** This Act confined the African majority to only 7% of the land in South Africa, only about 9 million hectares of land. It effectively banned Africans from buying and owning land anywhere other than in their designated reserves which with time became degraded as a result of overcrowding. It banned squatting thereby undermining the capacity of the African peasantry to sustain itself.
- **Urban Areas Act of 1923:** this forbade the further granting of freehold property rights to Africans on the grounds that they were not permanent urban residents and 'should only be permitted within municipal areas in so far and for so long as their presence is demanded by the wants of the white population

- **Natives Trust and Land Act of 1936:** This Act was later renamed Bantu Trust and Land Act, or Development Trust and Land Act of 1936. The Act added another 6% to the land in the reserves, leaving about 13% of the land for Africans, although this concession was traded with the voting rights of Africans in the Cape for instance. This Act provided for the establishment of the South African Native Trust. This Trust was tasked with acquiring and administering land in the reserves. The Trust also became a very repressive mechanism for Africans in that it tightened even further the conditions under which Africans were allowed to occupy white farms.
- **Group Areas Act of 1950:** this prohibited different races from living in the same area, for instance, blacks would be removed from the areas they inhabited, which according to the Act were supposed to be exclusive white enclaves. It is estimated that over 3.5 million people were dispossessed of their land due to the application of this Act between 1960 and mid-1983.

SO NOW, WHO OWNS THE LAND IN SOUTH AFRICA?

- The total land surface in South Africa is about 122 million hectares.
- The Department of Rural Development and Land Reform has undertaken two land audits. The first phase of these audits was to determine the extent of land owned by the State, and that in private ownership

The table of State vs Private land ownership is extracted directly from the Department's Land Audit report:

PROVINCE	SIZE	STATE OWNED	PRIVATE LAND	UNACCOUNTED
Eastern Cape	15.9 Million	9%	67%	24%
Free State	12.9 Million	7%	91%	2%
Gauteng	1.8 Million	17%	65%	18%
Kwazulu-Natal	9.3 Million	50%	46%	4%
Limpopo	12.6 Million	20%	70%	9%
Mpumalanga	7.6 Million	25%	63%	13%
North-West	10.4 Million	23%	71%	6%
Northern Cape	37.2 Million	5%	94%	1%
Western Cape	12.9 Million	8%	89%	3%

The 2013/14 Land Audit found that 79% of South African land was in private ownership, 14% owned by the State, and 7% was unaccounted for. The 7% that was unaccounted for was likely land that had not been surveyed at the time.

The second phase of the audit, completed in 2017, dealt only with private ownership of land. It reports that, individuals, companies, and trusts have a combined ownership of 90% of the total land audited.

PRIVATE LAND OWNERSHIP	HECTARES	%
Individuals	37 800 986 Million	39%
Trusts	29 291 857 Million	31%
Companies	23 199 904 Million	25%
Community-based organisation	3 549 489 Million	4%
Co-ownership	883 589 Thousand	1%

- The Land Audit also reveals that Whites own 72%, followed by Coloured at 15%, Indians at 5%, Africans at 4%, other unidentified by race at 3%, and co-owners at 1%.
- All this inequitable distribution of land is a direct consequence of colonial land dispossession, and apartheid forced removals. The democratic State has been unable to undertake a thoroughgoing land redistribution programme to reverse the inequitable distribution of land

WHAT IS THE CURRENT NATURE OF THE SOUTH AFRICAN LAND REFORM PROGRAMME?

- Land reform is a purposeful intervention to change the nature in which land is held, to redistribute it to the landless and the land hungry. Land reforms happen in basically two ways: through revolutions, and through laws proclaimed by governments
- Land Reform in South Africa was not a product of revolutionary change, it is a constitutionally enshrined imperative, provided for by Section 25 of the Constitution, the so called property clause.
- Section 25(5), 25(6) and 25(7) make provisions for a three-tier land reform program; land redistribution, land tenure reform, and land restitution, respectively.
- Section 25(5) obliges the State to take 'reasonable' legislative and other measures to enable citizens to gain access to land. This is called land redistribution.

- Section 25(6) obliges the State to provide protection to people whose tenure to land is legally insecure. This is called land tenure reform and applies to farmworkers and farm-dwellers, township dwellers who never had titled to their houses, people who live in the former homelands whose claim to land is not premised on titling, etc.
- Section 25 (7) grants people who were dispossessed of their land after the application of the Natives Land Act of 1913 a right to lodge claims to get their land back, or to be entitled to equitable redress. Equitable redress may be in the form of an alternative piece of land, or through monetary compensation. This gave rise to the land restitution programme.

- Through all these forms of land reform, the State had initially planned to transfer about 30% of the land back to African people by 1999.
- To date, only about 9% of the land has been transferred back to black people through the land reform programme. The State has paid billions of Rands paying off white land owners to get land for land reform.
- As a consequence, colonial and apartheid forms of land holding still persist. This is due to a number of reasons, chief amongst which is State incapacity and a restrictive Constitutional framework that draws a moral equivalence between the rights of the dispossessor and the rights of the dispossessed.

WHAT DOES THE CONSTITUTION SAY ABOUT EXPROPRIATION?

- Expropriation is a legal mechanism through which the State takes over property owned by another entity, be they private individuals, companies, Trusts, or Community Based Organisations.
- Expropriation of property is currently provided for in the South African Constitution, in Section 25(2), provided it is done through a law of general application, and for two reasons, namely; for a public purpose, or in the public interest. Public interest is defined as the nation's commitment to land reform; while property may also be expropriated for a public purpose, such as for building dams, erecting power lines, constructing rail infrastructure, etc.
- Section 25 (2)(b) unambiguously says that expropriation must be subject to compensation, amount of which must be agreed upon by the expropriating party, and the person from whom property will be expropriated; or the amount must be decided by a court of law.

- Calculating the amount to be paid for compensation must take into account a number of factors, listed in Section 25(3) of the Constitution; and these are: (i) the current use of the property, (ii) the history of acquisition and use of the property, (iii) the market value of the property, (iv) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and (v) the purpose of expropriation.
- The Constitution as is currently written does not allow for expropriation without compensation; neither for the narrow, piece-meal expropriations advocated for by liberals, nor for the broad-based expropriation advocated by the EFF.
- Taking all the factors which must be considered for determining compensation into account, it is clear that the only quantifiable factor is the market value of the property. Records of direct State investment on land dating back to the time of dispossession have been lost, and the quantum of judging what is 'just and fair' compensation in a neo-colonial set-up such as the one we have is not clear.

- This approach advocated for by liberal opinion makers will also lead to an excessively litigation based land reform programme, and land owners can basically veto this programme through courts.

WHAT IS THE EFF POSITION ON LAND EXPROPRIATION WITHOUT COMPENSATION?

- The EFF wants Constitutional amendment that would make it legally permissible for the State to expropriate land without compensation; and not other forms of property.
- This land must then be transferred to the custodianship of the State, which will then administer and redistribute it equitably for residential and productive use to all South Africans.
- The principle here is that land is a common natural endowment, from which everyone must be able to reside, produce, and satisfy their spiritual requirements. What must become private possession of an individual is the manifestation of that individual's labour, such as crops, trees, buildings etc, but not the land.

- The Founding Manifesto says *“The EFF’s approach to land expropriation without occupation is that all land should be transferred to the ownership and custodianship of the state in a similar way that all mineral and petroleum resources were transferred to the ownership and custodianship of the state through the Minerals and Petroleum Resources Development Act (MPRDA) of 2002. The state should, through its legislative capacity transfer all land to the state, which will administer and use land for sustainable-development purposes. This transfer should happen without compensation, and should apply to all South Africans, black and white”*

- The Founding Manifesto further states “*State custodianship of land will mean that those who currently occupy land should apply for licensing to continue using the land and should clearly state in the application what they want to use the land for over a period of time. Under this legislation, no one should be allowed to own land forever, because those who have money can, over time, buy huge plots of land and use them for counter-developmental private purposes, such as using land as game farms. A maximum of 30 years can then be placed on all land leases applied for by private corporations and individuals, with the state retaining the right to expropriate in instances where the land is not used for the purpose applied for.*”

- This means private ownership of land will be discontinued, and the State will be entrusted with the responsibility of managing and administering land on behalf of the people. The State must then allocate land-use rights to be people on a fair and equitable basis, prioritizing in the main, African people whose land this is.
- This will demand a capable State able to strategically immerse itself in thinking about, and directing development. It will also require a State that is decisive and intolerant of corruption.
- The overall idea of State custodianship is not as limited as others say however. On taking the commanding heights of the economy and vesting these in the hands of a revolutionary State, the EFF Founding Manifesto says *“This will happen through various and combined forms of common and collective ownership, ranging from State ownership and control, co-operatives and workers’ ownership and control of the key sectors of the economy. State ownership is within this context, an elementary component which will lead to more progressive forms of collective ownership, control and benefit, and therefore not narrow State-capitalism”*.

WILL PEOPLE LOSE THEIR HOUSES AS A RESULT OF EXPROPRIATION WITHOUT COMPENSATION? AND WHAT ABOUT URBAN LAND?

- No, no one will lose their house as a result of land expropriation without compensation.
- A house is an immovable property, which is a product of an individual's labour, and therefore, a private property of that individual.
- The erven on which the house is built becomes sterilised for any other use, and because of its attachment to another immovable property, it becomes an accessory to the house, and also becomes the property of the owner.
- What this means is that while homeowners rights to their homes is secure, any other piece of land outside the homeowners erven is automatically ceded to the State.

- The State can then directly intervene to declutter townships, and ensure a balanced allocation of land for residential purposes, and build low cost housing in areas previously seen as enclaves of whites and the rich.
- The State must also ensure provision of land for urban agricultural development, and other recreational areas to ensure a balance social environment suitable for human habitation.

WHAT WILL HAPPEN TO AGRICULTURAL LAND?

- The dynamic is quite different for agricultural land. The products of social labour are the crops, the animals, and sometimes plantations, which are not all permanently attached to the soil. It is these that can be rightly said to be personal properties of a private individual, not the soil.
- The State must expropriate and be in custodianship of all agricultural land, and in a developmental manner, lead the process of reforming the entire agrarian economy, from the downstream economic activities relating to the production of agricultural inputs such as fertilizers and seeds, to the point of production, and properly address the inverse relationship between farm size and productivity, to the point of sales, which will involve opening up marketing opportunities for everyone, particularly small scale farmers.

- Security of tenure on agricultural land must be provided in the form of medium to long term leases of about 25 years to producers, at very low cost to the producers themselves. These land use rights are however reversionary. If the land is left fallow and not used, the State can take it back and give it to those who can use it productively.
- A truly transformative intervention in the South African agrarian economy must of necessity entail the subdivision of large and unproductive farming estates, redistributing these to small scale farmers, farm workers and farm dwellers, whose residence on farms must be given the air of permanence guaranteed to residents in more urban centres.

- The State must then develop other enabling mechanism for the development and support of the agricultural sector, through support with input resources, extensions services, and market access. The State must also protect the industry from undue competition from cheap products from outside the country, mainly from countries that support and protect their own agriculture. The principle position is that the agricultural sector cannot properly developed without a direct State intervention. This must entail the creation of an Agricultural Development Bank, the reconstitution of Agricultural Products Marketing Boards, and targeted support to smalls scale farmers in general.
- The State must also develop a policy to place a maximum limit on the size of land a person may own.

WHAT ABOUT THE ROLE OF TRADITIONAL LEADERS?

- The EFF respects the institution of traditional leadership, as traditional leaders are custodians of African culture and identity.
- However, traditional leaders do not own the land, they have never had the land as their private property. Traditional leaders have always been custodians of the land on behalf of the people, and the allocation of land was done based on known and respected traditional norms and practices.
- The EFF therefore wants society to be disabused from the idea that traditional leaders own land.
- The institution of traditional leadership however ought to play a role in ensuring a fair and democratic allocation of land on an equitable basis to everyone.

- The EFF position on land will do away without outdated traditional practices such as the denial of women rights to own land on their own, unless they are married or have a son.
- The process of land administration in areas where traditional leaders are present will therefore be democratized, to ensure maximum participation of everyone, including women, while ensuring that traditional leaders have a role to play too.

WHO WILL BENEFIT AFTER EXPROPRIATION?

- State custodianship of land will benefit the landless, the poorest sector of the South African population, the urban poor who are forced to stay in squatter camps.
- For agricultural production, farm workers and small scale agricultural household's stands to benefit from expropriation without compensation. This group constitutes the core of a new vision for agrarian transformation that entails aggressive promotion of small scale production, mainly because of its ability to utilise land for maximum production, its concern with the maintenance of a sound ecological infrastructure, and its ability to alleviate food insecurity at a local level.
- For the urban poor, land expropriation without compensation will guarantee that there is a planned human settlements strategy that prioritises housing provision for all, closer to the areas where people work. This must entail the eradication of the class division of residential areas, and ensure an aggressive development of low cost housing closer to central business districts.

- For the rural poor, expropriation of land without compensation will ensure a more democratised administration of land, and do away with outdated gendered perspectives of land administration as now enforced by the institution of traditional leadership. The departure point is that traditional leaders do not own land as their own personal property, communities do, and must decide on what happens in land that is commonly owned, without discrimination based on age, gender or sexual orientation premised on outdated cultural beliefs.

WHAT IS THE DIFFERENCE BETWEEN SA EXPROPRIATION AND ZIMBABWE LAND PROGRAMME?

- At the time Zimbabwe gained its independence, the framework for land reform was premised on a market-led land reform programme, wherein the State, with the assistance of Britain, was required to purchase land from white land owners for land redistribution purposes.
- This was based on the 1980 Lancaster Agreement which provided that government would not engage in compulsory land acquisition, and that land distribution would take place under a principle of "willing buyer, willing seller", whereby the government would "pay promptly adequate compensation" for property.
- This failed spectacularly, as it has failed in South Africa since 1994. As a result, ordinary Zimbabweans and people who had been involved in the brutal war of liberation took to the streets, and forcefully occupied land, kicking out white farmers.

- Attempting to take back control, the government announced in 2000 the Fast Track Land Reform Programme, aimed at acquiring land from white commercial farmers for redistribution to poor and middle-income landless black Zimbabweans. The objectives of the FTLRP were said to be, among other things, to acquire: “not less than 8.3 million hectares from the large scale commercial farming sector for redistribution”
- A key component of the land reform programme in Zimbabwe is that because it was a consequence of people’s impatience with slow land reforms since independence, it was not properly planned. The Fast Track Land Reform Programme was a response to the already wide-spread societal impatience with unequal redistribution of land.

- Zimbabwe's land reform therefore, was redistribution from below, which was hijacked by a poorly prepared State to introduce some semblance of order. The hijacking of this movement by the parasitic State also ensured that most ZANU PF fat cats acquired more farms for themselves, rather than for the people as whole.
- The EFF's position on expropriation without compensation is for a planned radical approach to land redistribution, aimed at first amending the constitutional framework for land ownership.
- There are no 'land grabs' proposed, but a societally endorsed State-managed approach to redistributing land.
- There will of course be a radical re-organisation of land redistribution, but this will be done through a sound, legal and societally driven process.

WILL EXPROPRIATION AFFECT FOOD SECURITY?

- Currently, South Africa is said to be food secure, meaning there is enough food produced to feed everyone. However, the country is at the same time household food insecure, meaning many households still struggle to put food on the table.
- The proposals put forward by the EFF will not only ensure the nation's food security, but also will ensure food security at a household level.
- By ensuring that all land is placed into productive use, by ensuring that those who have land are supported by the State to make productive use of this land, by supporting and promoting small scale farming, by ensuring government institutions purchase their food requirements from small scale farmers, by protecting agriculture as an infant industry from unfair global competition, EFF policies will ensure improved food production, and ensure not only nationwide food security, but household food security too.

WHAT IS THE EFF AGRICULTURAL POLICY?

- On agricultural policy, the Founding Manifesto says *“In line with the Freedom Charter and a new vision of agrarian revolution, the state should also provide implements and related extension services to help those who work the land to use it productively. Furthermore, the state’s procurement of food should prioritise small-scale farmers so that small-scale farming becomes a sustainable economic activity for the majority of our people. The state must buy more than 50% of the food for hospitals, prisons and schools from small-scale farmers in order to develop small-scale agriculture”*
- This is an explicit expression of strong support for intensive small-scale agricultural production. This will also ensure maximal use of available land.

- Currently, South African agriculture is not as efficient as it ought to be. There is no longer a coordinated and strong support and protection of the agricultural industry by the State in South Africa.
- In contrast, the countries from which we import most of our agricultural products do protect their agriculture.
- All countries in the European Union benefit from what is called Common Agricultural Policies, which prioritize subsidies and protection of their agriculture.
- South Africa, on the other hand, has one of the least protected agricultural industries in the world. It is for this reason that the poultry industry has almost been decimated in the country.

- On this question, EFF Founding Manifesto says *“A structured state support and agricultural-protection mechanism should be applied to all food products, including beef and other meats’ production and processing. The same applies to fruit, maize, and other essential food items produced by small-scale farmers. To boost sustainable demand domestically, the South African government should pass legislation that all the food bought by government for hospitals, schools, prisons, and the like should be sourced from small-scale food producers. This in itself will create sustainable economic activity, and inspire many young people to go into food production because there will be income and financial benefits to boost other economic activities out of it. The economy of food production needs well-structured protection mechanisms and subsidies in order to protect jobs and safeguard food security. Most developed and developing nations are doing the same.”*

- Recognizing the importance of the entire agricultural value chain to the transformation of agriculture in this country, the Founding Manifesto says *“Food production, packaging, transportation, marketing, advertising, retail, and trade should constitute one of South Africa’s biggest economic sectors. With a growing global population, and the growing capacity of Africans to buy food, South Africa needs to produce agricultural output through provision of subsidies to small-scale farmers, and open packaging and retail opportunities for these farmers”*
- This will require an engaged developmental State, able to intervene and interfere in the dynamic agricultural sector to strategically direct the process of agrarian transformation.

WILL EXPROPRIATION CHASE AWAY INVESTORS?

- No, expropriation of land without compensation, will not chase away investments.
- Investors need certainty and security of tenure. State custodianship of land will provide the strongest possible certainty, and will ensure the highest possible security of tenure is provided, for the time period for which the lease is provided.
- The practice of State ownership of land, which then gets leased out to private companies is already happening without much fanfare in this country. In the Forestry industry for example, South Africa has five forestry provinces i.e. Eastern Cape, Western Cape, Mpumalanga, Limpopo and KwaZulu-Natal. The Department of Agriculture, Forestry and Fisheries (DAFF) indirectly manages 368 505 hectares of State plantations (Category A) through lease agreements signed with four private forestry companies and the South African Forestry Company Ltd (SAFCOL).

- The Department further directly manages 109 commercial forest plantations (Category B and C) with the total area of 63 114.21 hectares. Category A plantations with a total of 71 state owned plantations (181 185 hectares) are managed by private companies leasing the land from DAFF for a minimum period of 70 years. These companies are MTO Forestry (Pty) Ltd; Amatola Forestry (Pty) Ltd; SiyaQhubeka Forest (Pty) Ltd; and Singisi Forest Products (Pty) Ltd. In addition to this an area of 187 320 hectares is managed by the South African Forestry Company (SAFCOL) which is a State-owned company.
- This system of leasing land to forestry companies has not caused any damage to the forestry industry to date.

- The same is happening in the designated Special Economic Zones. In Coega in Port Elizabeth, the land is owned by the Coega Development Corporation, and there is almost R6, 2 billion operational investment in that zone, and there is further R16.6 Billion that has been secured, though not yet operational. At the Dube Trade Port in KwaZulu Natal, the land is jointly owned by the ACSA and the Dube Trade Port, and they have to date secured operational investment of R1.2 Billion, and secured further investment of R1.8 Billion which is yet to be operational. At the Richards Bay Industrial Development Zone, the land there is owned by the municipality and the Richards Bay Industrial Development Zone Company, and there is about R320 Billion of operational investments there.
- These figures alone are meant to demonstrate that the myth that State custodianship of land is inimical to investment and business activity is not based on any solid facts. To the contrary, it shows that State aided investment is the necessary precursor to sustainable investments.

WHERE ELSE HAS STATE CUSTODIANSHIP OF LAND HAPPENED?

- Land in Mozambique is entirely owned by the State, and companies and people are granted land use rights.
- Land in China is under State custodianship, and is available to users on the basis of long-term leasehold, or on the basis of Land Use Rights.
- About 90% of the land in Botswana is either State owned, or Tribal owned. This land cannot be sold, but rather, is leased from the State or from Tribal Administration Land Boards.
- Land in Ethiopia is owned by the State, and people and companies apply for land use rights, or long term leases from the State.
- In Singapore, 75% of the land is state-owned and held by the Singapore Land Authority (SLA) which acts as custodian of the land.

WHAT IS THE PROCESS OF CHANGING THE CONSTITUTION?

- The process for amending the Constitution is provided for in Section 74 of the Constitution. According to this section, the founding provision in Chapter 1 of the Constitution can be amended with the support of 75% of the members of the National Assembly (NA), while the rest of the Constitution can be amended with the support of two thirds of the members of the NA.
- The Property Clause, which we seek to change, is in Chapter 2, the Bill of Rights, and can be amended with two thirds of the members of the National Assembly.
- A Constitutional Amendment Bill must be developed, and published in the Government Gazette at least 30 days before it is introduced, it must also be submitted to provincial legislatures and to the National Council of Provinces (NCOP).

- The Constitutional Amendment Bill must be debated and passed by two thirds of the members of the National Assembly.
- After the National Assembly passes this Constitutional Amendment Bill, it will also require the support of six of the nine provincial delegations to the NCOP
- If all the procedural requirements for the processing of the Bill are met, and the National Assembly and the NCOP consent to the Bill, the amendments then become part of the Constitution. The Constitutional Court may only intervene if the procedural requirements for amending the constitutional have been perverted, but they cannot change the substantive amendments themselves.