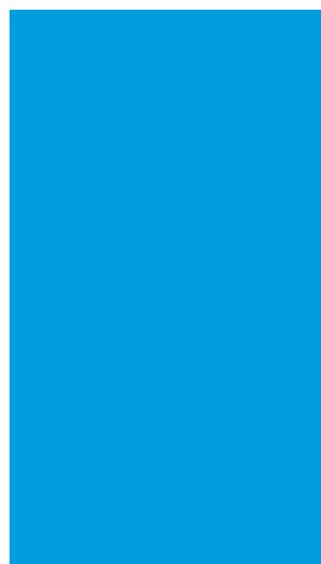
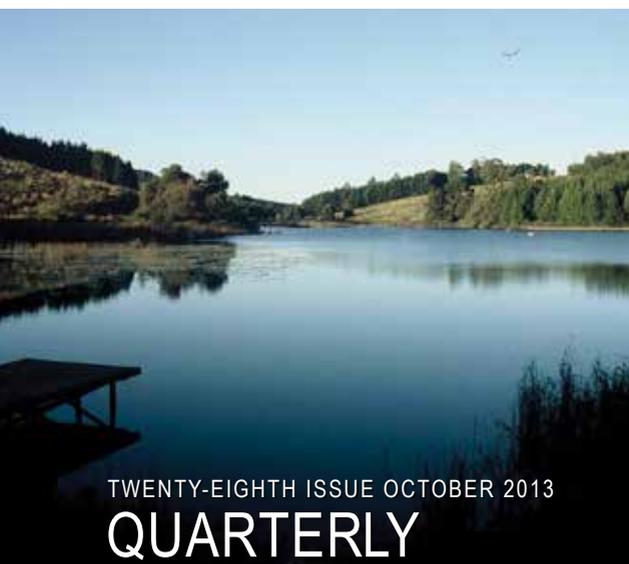




TITLE AND ENTITLEMENT: THE LAND QUESTION IN SOUTH AFRICA



TWENTY-EIGHTH ISSUE OCTOBER 2013

QUARTERLY

roundtable

THE HELEN SUZMAN FOUNDATION

SERIES

# roundtable

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### Vision

Promoting liberal constitutional democracy in South Africa.

### Mission

To create a platform for public debate and dialogue – through publications, roundtable discussions, conferences, and by developing a research profile through an internship programme – with the aim of enhancing public service delivery in all its constituent parts. The work of the Helen Suzman Foundation will be driven by the principles and values that informed Helen Suzman’s public life.

These are:

- reasoned discourse;
- fairness and equity;
- the protection of human rights;
- the promotion of rule of law.

The Foundation is not aligned to any political party and will actively work with a range of people and organisations to have a constructive influence on the country’s emerging democracy.

*“I stand for simple justice, equal opportunity and human rights; the indispensable elements in a democratic society – and well worth fighting for.” — Helen Suzman*

*Hosted with the support of the Open Society Foundation For South Africa*



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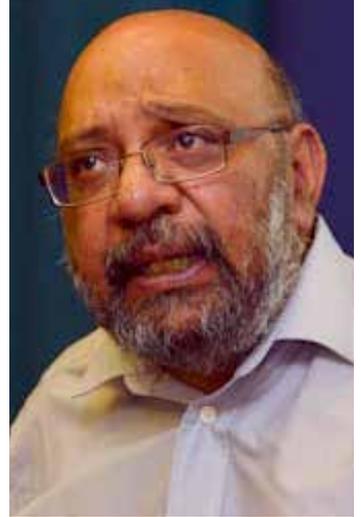
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# Profiles



**Nomboniso Gasa**

**Nomboniso Gasa** is a researcher, analyst and public commentator on Gender, Politics and Cultural Issues. Ms Gasa is a Senior Research Associate at the Centre for Law and Society, University of Cape Town. Her work focuses mainly on custom as a 'dynamic phenomenon'.



**Monty Narsoo**

**Monty Narsoo** is the former CEO of the South African Cities Network, and former Deputy Director-General of the Department of Housing. He is currently the Governance Specialist for the National Upgrading Support Programme and a Member of the Accreditation Panel for the Devolution of the Human Settlements Function.



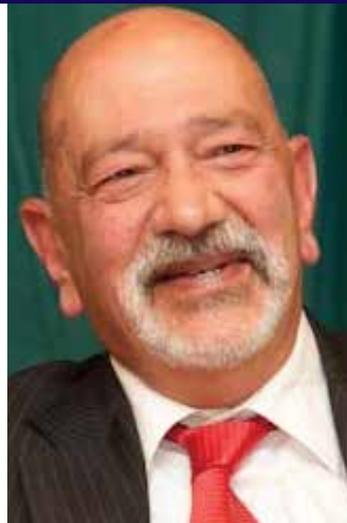
**Songezo Zibi**

**Songezo Zibi** is the Senior Associate Editor at the *Financial Mail*, a public intellectual and commentator who has written widely for various publications on politics, the economy and international affairs.



**Leon Louw**

**Leon Louw** is the Executive Director of the Free Market Foundation (FMF) and of the Law Review Project (LRP). His principal interests are small and micro business, and black economic empowerment. He has been intimately involved with and a prominent activist for organised and informal SMMEs, starting with the fledgling National African Federation of Chambers of Commerce (NAFCOC) and Johannesburg Street Vendors in the late 1960s.



**Francis Antonie**

**Francis Antonie** is the Director of the Helen Suzman Foundation. He is a graduate of Wits, Leicester and Exeter Universities. He was awarded the Helen Suzman Chevening Fellowship by the UK Foreign Office in 1994. From 1996 to 2006 he was senior economist at Standard Bank; thereafter he was Director of the Graduate School of Public Development and Management at Wits University. He was the founding managing director of Strauss & Co.

# executive summary



This year marks 100 years since the passing of the Natives Land Act of 1913. The Land Act relegated black South Africans to specific geographic areas ('homelands') and segregated land acquisition along racial lines, bringing with it massive land dispossession, and effectively sabotaging black ownership. The effects of Apartheid's land policies are felt by many South Africans to this day, and current land policy and redistribution efforts have failed to untangle the mess.

The HSF brought together:

- Nomboniso Gasa (A researcher, analyst and public commentator on Gender, Politics and Cultural Issues);
- Songezo Zibi (Senior Associate Editor at the *Financial Mail*);
- Monty Narsoo (the Governance Specialist for the National Upgrading Support Programme); and
- Leon Louw (Executive director of the Free Market Foundation).

The main theme was land ownership which was discussed from a social and formal perspective.

Gasa, Narsoo, and Zibi emphasized how ownership is linked to identity. Narsoo argued that 'title deeds' are not the only way that tenure security can be achieved. He went on to say that social practices and the acknowledgement of these practices can be just as secure. Zibi noted that land is not always used 'to farm' but that people need land to create a home.

From a formal perspective, all speakers agreed that the legal recognition of ownership is extremely important. Louw emphasized that, without unambiguous title deeds, citizens cannot participate in the economy as full citizens.

Gasa held that urban, and 'traditional land' should be spoken about in the same terms. She raised concern over 'chiefly power' in traditional areas, and how government and private interests trump the interests of those citizens living in these areas. She argued that 'tribal structures' are reproducing apartheid structures. In reality, Gasa argued, 'traditional areas' is only a euphemism for 'homelands', and those who occupy these areas are still not liberated from apartheid's



hold. She and Narsoo spoke about ‘new forms of dispossession’ in the form of evictions and land removals.

Narsoo raised concern over the fact that South Africa, now an ‘urban country’ with growing informal settlements, is still stuck with a labour migrant system. He pointed out that an important step government has taken has been to recognize informal settlements as legitimate areas, and that the challenge now is to upgrade these settlements.

However, as the HSF noted in its opening remarks, the forced land removals and further atrocities recorded in Cato Crest and recently drawn attention to by prominent international scholars and academics, illustrates how vulnerable many citizens are without a way to assert their ownership.

Zibi brought attention to the process of land reform as a ‘bureaucratic program’. The result is a loss of individual and collective agency in the process. Zibi claimed that land reform is a failure of leadership – if the land issue is to be taken truly seriously, a

conscious decision must be taken to place the issue at the top of government’s agenda. According to Zibi, land restoration ought to be founded on human solidarity, and where it is shown that land has been dispossessed, action needs to be taken – but within the framework of the Constitution.

Louw closed the discussion by ‘debunking’ what he considered to be ‘land myths’. These myths included government targets for land distribution, the state of land ownership before and after the 1913 Land Act, and the ‘dangers’ of granting permanent land holders free, and unambiguous title deeds. Louw pointed out that although RDP housing has been provided by the government, these houses are provided under very strict guidelines that undermine genuine ownership. Occupants are not able to freely trade, rent, or use their property in the same way that private land owners can. Louw held that if politicians are serious about achieving racial equality, they would declare all permanent holders of land to be unambiguous owners of freely tradable, mortgageable and lettable land.



On behalf of the Helen Suzman Foundation I want to welcome you to this roundtable on land, specifically dealing with the themes of 'Title and Entitlement'.

I want to take this opportunity to acknowledge the support of the Open Society Foundation for South Africa. I would also like to acknowledge the support of GIBS. For those tweeting, the hashtag is #Land.

This year marks 100 years since the passing of the Natives Land Act of 1913. This Act has had profound consequences, not only for specific communities, but has also in part determined the political trajectory of modern South Africa.

The so-called 'Land Question' is fraught with many difficulties, including the challenge of establishing what land belongs to whom, land administration, urban development and agricultural transformation.

Moreover, the Constitution protects existing land rights and authorises the promotion of land reform within the framework of Section 25. Section 25 is characterised by a tension between protecting existing property rights and achieving justice in access to land.

Some may very well see the Constitution as an obstacle to achieving restorative justice. Others see it as a vehicle. The government

has indicated a need to intensify the land redistribution programme, apparently moving from a willing buyer, willing seller to a just and equitable approach.

More recently, the National Development Plan (NDP) recommends that every municipal district with commercial farmland within its borders, should establish representative committees to facilitate a 20% transfer of land to black ownership under very specific guidelines, to prevent market distortions.

Some have however argued that the land policy has failed to afford genuine ownership, tenure security and the possibility of participating in the economy for many South Africans. Land policy has failed to deliver this right to the poor, and in so doing, they continue to be severely disadvantaged.

It is this question of genuine ownership that we want to focus on this evening. The other question, which I hope we can consider, is balancing individual and community rights.

On 4 October, an open letter was published in the *Mail & Guardian*, in protest at the repression of the Cato Crest shack dweller movement in Durban. This letter was signed by notable international scholars, academics and activists, including Noam Chomsky and Slavoj Žižek.

This letter draws international attention to illegal evictions by the municipality in Cato Ridge, near Durban, in March 2013, and the forced land removals in Marikana. These removals have been characterised by police brutality and a blatant disregard for human rights.

Those of us who are older, may recall the work of the Catholic Priest Cosmas Desmond, who in his 1970 book *'The Discarded People'* brought attention to the terrible injustice of forced removals during the apartheid regime.

That was 43 years ago. What happened in Cato Crest, some regard as a forced removal. Are these sorts of activities acceptable in a constitutional democracy? How can this be tolerated?



Now, I draw your attention to the current edition of *Focus*, the journal of the Helen Suzman Foundation, which is devoted entirely to the land question. In this edition, various distinguished scholars, writers and activists discuss the broader implications of land reform. The journal is online at [hsf.org.za](http://hsf.org.za). I urge you, if you can access it, to please do so.

It gives me great pleasure to welcome tonight's speakers. The first will be Nomboniso Gasa, who is a researcher, analyst and public commentator on gender politics and cultural issues. She is a Senior Research Associate at the Centre for Law and Society at the University of Cape Town. Her work focuses mainly on custom as a dynamic phenomenon.

Our second speaker will be Monty Narsoo, who is also a former colleague at the Management School at Wits. He is the former CEO of the South African Cities

Network, and a former Deputy Director-General of the Department of Housing.

Our third speaker will be Songezo Zibi, who is a Senior Associate Editor at the *Financial Mail*. He has written widely for various publications on politics, the economy and international affairs. He is also a member of that elusive Midrand group which we finally pinned down tonight.

Finally, Leon Louw, who is Executive Director of the Free Market Foundation and a member of the Law Review Project. Mr Louw's principle interests are small and micro business and Black Economic Empowerment. He has been intimately involved with, and has for many years been a prominent activist for organised and informal SMMEs, starting with the fledgling National African Federation Chamber of Commerce and the Johannesburg Street Vendors.

# WELCOME



## Nomboniso Gasa

**G**ood evening. I prefer to stand, so that I can thoroughly intimidate anybody who dares to challenge or disagree with me. Thank you very much for this invitation.

I am going to resist the temptation to follow the suggestions for what we should be looking at today, and bring into the room some of the realities of South Africa's land questions that are often beyond our line of vision.

Umda is a Xhosa word that means boundary. It means a geographical boundary that signifies the point beyond which you cannot move. It is not simply a physical boundary, however. In isiXhosa we say utshibe umda, which means that you have gone over the boundary, but also that you've gone into a space where you do not belong.

Land questions in South Africa are heavily weighted with notions of boundaries in physical, spiritual, emotional, historical

and psychological senses. We hear people speak of Africans and their attachment to land as if it were nothing more than nostalgia. In so doing we are actually dismissing a rightful claim that people have to something which gives them a sense of grounding and belonging.

We tend to say "but we aren't actually dealing with the economy, we're dealing with land". So, there is this interesting relationship between land and the economy, and depending on who raises it first, you can almost guess what kind of response you are going to get.

We all know that there are four elements of the land question in South Africa: redistribution, restitution, tenure and land reform. Frankly, the post-1995 period has failed in all those areas. I want to argue that you cannot deal with the 1913 Land Act without dealing with the 1936 Native Land Act, which actually consolidated and implemented what the 1913 Act had specified.

Why is it that the state tends to take the options that further disempower people?

I want to argue that these political and policy choices are not just informed by lack of understanding or incompetence by the state. I think that, whether we like it or not, land questions speak to a larger global economic structure in our societies.

The second issue I want to touch on, is the tension between communal and individual land rights. In the last ten years we have seen a consolidation of chiefly power in ways that are unconstitutional, whether Bills are passed or not.

*It is probably one of the most problematic of a whole basket of laws, and one of the most powerful new forms of dispossession for the majority of South Africans, because what it says, is that if I live in an area that is designated as a traditional area, I cannot have a title deed.*

It is in fact irrelevant, because we de facto have a layer that has been introduced in terms of governance that is unconstitutional, which is the fourth layer, i.e traditional leadership. We also have differentiated access to citizenship and rights, depending on whether you live in a area that is called traditional, or whether you live in an urban area.

In the process of trying to refine and interpret what the Constitution talks about in terms of customary law and its right to exist in a contemporary democratic South Africa and its human rights-based Constitution, we had a very interesting interpretation of that, which was given expression in the Traditional Leadership and Governance Framework Act of 2003 (TLGFA).

It is probably one of the most problematic of a whole basket of laws, and one of the most powerful new forms of dispossession for the majority of South Africans, because what it says, is that if I live in an area that is designated as a traditional area, I cannot have a title deed.

So, the issue of entitlement and title doesn't apply. Secondly, it means that I cannot choose what form of justice I want to have access to, and it means also that whether I want customary law to apply to me or not, is defined by umda, the boundary.

We have a system of law that congeals the Native Land Act of 1936 in such a way that it gives much power to a layer of unelectable and unremovable section of people who govern. Those are traditional leaders, often defined and designated through genealogy, which is of course contestable.

What does this do? It takes us right back to 1936. This is where we are. This is when the final homeland was promulgated. Today, these boundaries are reproduced in terms of economic power and access to the economy. They are not called 'homelands' anymore, but 'traditional areas', and they fall under the TLGFA.

In consolidating chiefly power, a very interesting phenomenon has happened in South Africa, where the resources used to be the places that were considered to be wealthy, but are not necessarily any longer so.

The mining economy is shifting very quickly to those areas that are darker, and where people are poor and do not have title deeds. These are new forms of dispossession.

Here's a collusion. All of the people who talk about the right of the private sector to determine how and where they want to invest, do not talk about collusion between the private sector, the state and chiefly power to dispossess those who have always been dispossessed.

What do mining bosses do? When they go to areas, they first want to know who the local chief is. There's a facilitator who ensures that this man gets his millions, and all the SLPs and everything else is negotiated around this chief.

What this does is create a system of patronage and a congealing of geographical and geopolitical redefinition of South Africa, that reconfirms dispossession of black and poor people.

# nomboniso gasa



Until we deal with these uncomfortable questions and go back to what my father said when he argued with my uncle who said all he wants is land. I was too young to understand, so my father scooped up some soil and said “what the hell are you going to do with it?” My uncle said “well, I don’t care, this is what I want”.

The point is, today we talk about the so-called failed black farmer. But when you give people land, but no power, resources, training and support, you are in fact perpetuating dispossession and real psychological alienation. Thank you very much.

**CHAIRPERSON:** Nomboniso, many thanks for beginning with this evening’s discussion and for framing it within a particular context. I’m going to ask Monty Narsoo to continue with his presentation.



## Monty Narsoo

monty narsoo

**T**hank you, Chair. My opening remark is that I've known Nomboniso for many years – we were at the same party and I'm not talking of political parties.

Nomboniso talked broadly about the political issues around land. I'm going to be a little bit narrower and primarily discuss urban land.

The National Upgrading Support Programme is a programme for upgrading informal settlements in the country. It is a National Department of Human Settlements programme, and much of what I've got to say is in relation to this. It is a combination of some provocative statements and stories which will hopefully encourage some discussion and debate.

The issues I want to deal with are the questions of genuine ownership, security of tenure and participation in the economy. I've broken this down further into issues around

productive land, land value and markets, use value and history, culture and identity.

I think that 'genuine ownership' is something I don't understand, because no matter what piece of land we have, even if we have a title deed, there are limitations. Genuine ownership is linked to whether or not we have secure tenure.

If one looks at some of the townships, particularly in the Western Cape, where people obtained a RDP or BNG house, and they had a title deed, they were forced to sell their houses by the person with a gun. Which was more secure tenure, the one with the gun or the one with the title deed? The issue of ownership and the limitations thereof is important.

I think the second issue is security of tenure, which allows us a place which we call home and which affords us some security, not necessarily via a title deed.

There are a number of social practices that allow one to get that sense of security. Because of our long history of dispossession we find ourselves in a situation where we see genuine ownership as the only form of secure tenure.

I could make the connection between participating in the economy and the issue of title and entitlement. South Africa is a water poor country, and if we look at the land that we say is up for restitution, it is dry, arid land.

If you look at where the most productive land is, it is the land that is most contested, with the highest prices. So how do we see land? If we are saying land is a means to participate in the economy, the issue is about productive land.

The third issue is about land values and markets. What's important is that we often understand land markets in very formal terms, and use terms like 'genuine ownership' and 'security of tenure'.

But the most thriving and efficient land markets at the moment are in informal settlements. The transactions are quick. There's relative value for money. Its all about social acceptance.

Its about the informal economy, in which people use a variety of ways to try to achieve secure tenure, and a lot of that has to do with social practices. We have to understand that as part of the way we understand land markets, particularly informal land markets.

The issue of land value is very often related to location, and we often say that a good address and a small house is more valuable than if you are badly located. Because of that, what we found is that when we tried to chase the target of one million houses in five years – which is a RDP target – we found that the best land was taken up.

It was the most expensive land and when you're chasing a target you look for the easiest ways of achieving it, and that land was located on the periphery of townships, not even near city centres. So, the whole issue of land value in the formal sense, has meant that where government has been

involved, the land was very badly located.

I think the point about history, culture and identity was brought home to me today, when I was at a meeting which the Deputy President, and he told a story of Sol Plaatje wandering around on his bicycle in 1913, capturing the lives of black South Africans.

He said he witnessed the most extraordinary theft. There was a family kicked off their land and they were travelling along the road, and one of the kids was very sick, and died. They had to wait until dark so they could steal a grave to bury their child.

*Just let me remind you, it is not only black South Africans that want to go home to their old farms. It is a South African condition to one day go back to the plaas.*

Understanding that history of being deprived of land, and understanding that many people's identity is linked to that, and that for many of us to go back home is very important, and that if we miss that point, we are missing a whole lot about South Africa.

Just let me remind you, it is not only black South Africans that want to go home to their old farms. It is a South African condition to one day go back to the plaas. But I think it's also important to differentiate how we look at land. I deliberately said that people in urban areas view land differently to those in rural areas.

We are talking of where people are located, and often people view land from whence they come from in a very different way, because it is so tied to their history and their identity in trying to gain a foothold in urban areas, where land is more about getting a small space in order to access the opportunities which urban life offers. We are often slightly schizophrenic in that sense, because we've got our feet in both the rural and the urban.

Why do I think urban property is so important? Because statistically we are an urban country, but also a migrant country. We have not

dismantled the migrant labour system, and are very mobile. The movement is not only from rural to urban, but rural to rural, to small towns or other urban areas: we have very large movements in this country.

Just to give you an idea of that, in 1994 it was estimated that we had 300 informal settlements. In 2010 we had nearly 2700 informal settlements, with over 1.2 million inhabitants. Where are these people, how are they accessing urban areas, and what does this mean?

Going back to the point about informal economies and some of the Government's programmes, where we said everyone should have title deeds because they were denied them in the past. That's true, but I think what's also important is that we've got to understand this new mobility and migrancy, and we might have to look at secure tenure not necessarily as ownership, but also around rental.

I will talk about what I'm calling repossession and dispossession. I think it's important that we understand this.

In 2010 the President said there will be 12 outcomes. One was to have 400 000 households in well located informal settlements receiving basic services and secure tenure by 2014. For the first time we were acknowledging that people in informal settlements have rational reasons for wanting to stay there.

We need to ensure that the first is to provide them with security of tenure. Such as in Johannesburg, where they introduced what they call a regularisation policy, where they recognise informal settlements as the first step. All they are saying is that you will not be evicted.

This recognition by government is that communities settle in specific locations for functional reasons, which are about access to social, education, health and economic opportunities. Very interestingly, young men move very close to the inner city, whereas women-headed households move closer to where townships are, because of access to schools and clinics. There is a complexity



monty narsoo

*Very interestingly, young men move very close to the inner city, whereas women-headed households move closer to where townships are, because of access to schools and clinics.*

here, but the point is that we understand why they've moved, and will thus be given secure tenure.

We know that for many people, a concern is the precarious foothold that communities have in these mainly urban areas, and that giving that security of tenure to residents might also enhance their livelihood strategies, particularly their social and economic investment in the areas where they live. Very often people move to where they have social connections and networks.

What is however very important is that there is a recognition that tenure security is not enough. Simply to give a person a piece of land is not enough. The issue of basic services such as water and sanitation, become very important.

Thirdly, there needs to be support for community building, both for individuals and institutions. It is not just land that is important. We need to take notice of all of the other social requirements that need to be put in place.

Previously there were hundreds of agricultural extension offices, and then when we came into government in Gauteng there was the Land Programme. The Land Programme gave small farmers in the south of Johannesburg a piece of land, but gave them nothing else, no support, no skills building and no access to resources. I think that a combination of all those things is a more desirable way to go forward, when we are talking of land in relation to economic activities.

Looking again at repossession and dispossession, in 2010 the President discussed a way to change policy, but there is huge resistance. It seems that a lot of people at provincial and local government level still like RDP houses because they can put on a show cutting the ribbons when they are handed over.

I think what is quite important is to realise is that we are saying there is repossession in two ways (1) that repossession is a government policy that is going to recognise people and (2) that people are beginning to move into areas and repossess certain parts of the city.

There is also the issue of dispossession, for example, Duncan Village in East London has been there since 1903 and it is very dense. It is as dense as Alexandra and people move there because it's a five minute walk from the city centre.

Despite the new policy, a decision was taken by the local council that they are going to provide people there with little RDP houses on 250 square metres of land and then the rest of the people will be relocated 25 kilometres away to Reeston. Reeston is actually an apartheid township developed pre-1994.

There are 21 000 families in Duncan Village. They will be able to accommodate 5 000 families in the new housing scheme. That means 16 000 families are going to be relocated. This would be a forced removal

that compares to those of Sophia Town and District 6.

There is a new euphemism on urban management, it basically means, as a Chinese official once said to me when we were discussing the large numbers of people coming into Beijing, we have to strengthen our administrative measures, so eviction is the new dispossession.

The tension between the property clause and the issue of restorative justice can be shown through a German example. At the fall of the Berlin Wall the West Germans said the communists took away all their land and what they wanted is to claim their land back from East Germany.

While East Germany and the German Democratic Republic was communist, and therefore land or ownership or property was outlawed, for some reason there was the Land Administration Unit which continued to keep records. They kept the records updated and had these records since the turn of the century.

There were claims for restitution of the dispossession of Germans by the communists until people started seeing the records, and then the Jews who were dispossessed by the Nazis argued that they also had a right to restitution. The question is how far back do you go when looking at dispossession? There are two sides of the story.

The second side of the story is that we have a huge problem in the state of our land administration in this country. If there is one thing that denies people possession or property is the state of how land administration works. When people that got RDP houses in 1994 are still waiting for their Title Deeds one may argue then that is a new form of dispossession.

**CHAIRPERSON:** Monty, many thanks for taking this discussion forward. It is my great pleasure to ask Songezo to enlighten us on this matter thanks.



## Songezo Zibi

# songezo zibi

I am not an expert in this matter but I believe most of it requires only two things; honesty and good old logic.

Perhaps the problem is that the issue of land ownership, land restitution, land management, and all that attends it, has been hostage to a certain type of logic. This is a logic that says that what constitutes the fundamental basis of a century old conflict is to be reduced to a bureaucratic problem called land reform.

I am going to at least attempt to be honest with you by telling you my understanding of a truth that I believe can possibly set all of us free from being hostage to a somewhat disingenuous orthodoxy. Hunger and greed for land and all that it carried were the reasons we've had so much conflict over the last 300 years at least.

Thankfully, at some point in the 1990s, it became clear that continued conflict would serve no one, and that we all got together

to talk. The outcome was a Constitution that many of us are proud of, and a reconciliation project led by the most powerful global icon the world has ever seen, our own Nelson Mandela.

This was hardly surprising. Coming from the recent history in which the rights of the individual and the rights of entire groups of people were decimated through a careful and comprehensive institutionalisation of oppression, it was only right that such a system be replaced by one which prioritised rights and substance over legal form.

We engaged further, and informed institutions that would not only guarantee the rights of future generations, but would help us navigate the difficult conversations that we would have in the future. In that process I honestly believe we lost something. We also lost the individual and collective agency to achieve what our Constitution enjoins us to pursue.

We believed that this web of institutions attached to government absolves us of the responsibility to keep talking, to acknowledge one another and to produce the kind of resolutions that would give us a genuinely new society. Fundamentally, we believed that we could go back to our pre-1994 positions and things would be just fine. They can't and they won't. We know that now, well, hopefully we do.

*If we accept that the South African conflict was about land, how could we not place it at the centre of our conversation about the future?*

In deciding that the restoration of land ownership to black people was a bureaucratic problem rather than a fundamental act of reconciliation, we committed probably the most fatal long-term mistake we could have. I'm not even sure how we got here.

If we accept that the South African conflict was about land, how could we not place it at the centre of our conversation about the future? How could we relegate reconciliation to a symbolic act on special occasions, while we became comfortable with social and economic structures that represent a past we claim we want to leave behind us? I believe this is partly a failure of leadership and imagination and an outcome of fear. Perhaps we were afraid that we would go back to the conflict that we had before.

As we discuss the issue again, I ask that we consider three propositions. The first is that we take a conscious decision to place the issue of land at the centre of our national reconciliation project.

We need to ask ourselves honestly why it is that we believe that structures, if they were created under conditions of conflict and coercive force, should remain unresolved for a long time and be left to a bureaucracy to resolve. Are we that brazen about giving lip service to reconciliation?

If we accept that black people came to be without land in their own country because

they were forcibly dispossessed of it, why do we feel that, as a mark of reconciliation, they need to find resources they don't have in order to buy it back? Am I proposing expropriation without compensation? Of course not. But I am asking that we consider a formula that does justice to creating a genuinely equitable society.

Using the 1913 Land Act as a base for all land claims is in itself a profound concession by people, some of whom feel that all land should be returned to black people. We know, and that is why there is no revolt about this, not yet at least, that using Section 25 as a basis would create further problems that we do not want to be dealing with now.

If you want to create a united society, it is self-evident that such a process would be counterproductive. However, when it has been established that a family or an individual was forcibly removed from their land, we need to ensure that they get some form of meaningful restoration.

In doing so, we have to provide adequate compensation for those who have to vacate or share it as a result, but we must disabuse ourselves of a mindset that reduces this to a straight commercial transaction – it is not. If we do, we then reduce the entire reconciliation project to a transaction of self-preservation.

Under such circumstance it becomes, to me, a dishonest endeavour, a dangerous foundation upon which to claim that we are building a society premised on freedom and human solidarity.

Therefore, I support the establishment of a Land Valuer-General for the purposes of making these determinations. Of course I would not want this authority to impinge on the area of undisputed private business transactions. However, where land restoration is concerned, I believe this is the right way to do it if it is founded on the right moral principles of human solidarity, and building a genuinely new society. That must however, be accompanied by a repositioning of the entire process, so that it is no longer seen as an act of new dispossession but an act of reconciliation.

# SONGWEZO ZIBI!



The second proposition relates to what we believe is a purpose for which people own land or want to own it. Where I come from, land is not just about farming. It is about establishing a home, about being part of a community, and having a place in which you want to be buried when you die. It is about passing on to younger generations something they can feel connected to spiritually, a place of family and communal memories, and a place that shapes peoples' relationship with the world.

These were the very things that apartheid took away from people. It reduced them to inhabitants of ghettos, where conditions were so desperate that the majority of the sense of community was, I believe, lost. We would be making a big mistake if we do not believe and live the belief that land restoration is about reconciliation, and reconciliation is about restoring dignity and self-worth.

I would like to ask that we change our language, and that we should disabuse ourselves of certain notions, one of which is

that every piece of land is now a farm that commercially produces food. We know that this is not so. For the fortunate few, it is a sign of material accumulation to own a farm to which they return to watch the sunset, away from the hustle and bustle of the city. For others, owning land is about restoration of dignity. So we cannot always use the excuse that if land is restored to black people, then it automatically leads to food insecurity, or that those who regain land ownership necessarily have to want to farm. These orthodoxies have been accepted as conventional logic yet they are not universally applicable. In any event, there may be those black people that want to farm. To this extent they must be assisted to do so.

*The first is to restore the ability of rural community's to produce food for their own use. Where I come from it was a shame not to work the land every year.*

I want to propose that the purpose for which we make land available to people must go hand in hand with a different conception of development. We must move from land reform to land ownership.

Restoration, from building houses to building homes, from planning suburbs to planning communities. This we must do because we want to restore cohesion and order for these were the things that the conflict of the last 100 to 300 years took away from South Africa.

The third and final point I want to propose is that we act with extreme care before we give everyone the ability to mortgage their land to raise liquid capital. The question we have to ask is, what are we going to give people title to? We must think about the consequences of an outcome where someone has to give up their home to give up their land. It could have consequences beyond the western definition of what family is.

Auctioning off land to repay unpaid debt is a loss for families connected to the nuclear family and to that land. It causes a loss of spiritual connection with a place

of significance where relatives may be buried. Besides, the idea that someone has to lose their home due to an unpaid debt is inconceivable in many traditional communities, including where I come from.

So what do we do? Does it mean those with unlimited access to communal land are necessarily poor? Is it not more important that we invest in productive use of the land for own sustenance than encouraging people to use it as surety to secure liquid capital? I believe that we have to rather concentrate on doing two things:

The first is to restore the ability of rural community's to produce food for their own use. Where I come from it was a shame not to work the land every year. With the advent of democracy, the ability to work the land, to be proud in what you produce, and to look after a family, has evaporated.

People do wait for social grants, but if we are to restore the ability of people to produce their own food and look after themselves, how can we expect them to do it without land, and how can they do it when they are required to have the means that they do not have?

The last point is to graduate rural landowners to a level of production that is capable of commercial conversion. I know that the NDP says we don't water enough, and this is true, but Spain is also dry. Surely we can try more than farming methods in many other areas of the country to make this possible. I believe that we just don't have the will to do so.

By leaving unresolved the connection between the reconciliation we say we want and what we do to make it real, we risk committing a fatal mistake. That mistake will be to package the land issue and deliver it as a hostage to demagogues who will take it and run away with it for political gain. When that happens, we cannot claim to be not responsible.

**CHAIRPERSON:** Songezo, thank you very much for that remarkable delivery. We will take those three points up later. Finally, I'd like to call on Leon.



## Leon Louw

I'm going to move quickly over a couple of issues and I'm not going to apologise for being controversial.

Firstly, on the question of land, one of my concerns is that virtually every empirical assertion I ever read about, every statement that is made, is wrong. Not just wrong, but hugely wrong. Here are a few examples:

The 1913 Land Act supposedly started land dispossession for black South Africa, but it didn't. It was actually a consolidation of laws that preceded it by a long time. It was simply a link in the chain.

One of the arguments made by the Free Market Foundation is that there should not be a cut-off date for land claims, but should be open-ended. An empirical question should be asked: whether the land was dispossessed or not. That should determine whether you are entitled to restitution or not.

We are of the view that white people, who are concerned about blacks getting repossession,

should ask themselves: how can we want our rights secured and not stand for precisely the same security and unambiguous right to repossession of people who had lost their land because of the lack of security?

At the moment one of the places I am working in is the Bakgatla Ba Mocha Ba Mmakau tribal communities or traditional communities in the Mathadana District north-east of Pretoria. There we have the first traditional tribal community where every single plot is now held under full freehold title.

No ambiguity, just simply, fully free, tradable title, indistinguishable from the title here, in a so-called historically white area, and none of what is feared has been happening. The people are not selling. They are not becoming dispossessed. In fact the problem is they don't even realise yet that they are actually free to trade because of their tradition and their history.

Another example is in Alex Township, where all the land was dispossessed in the late 1960s.

It is now the property of the Johannesburg City Council, and despite its supposedly upgrading of informal settlements, the people in Alex whose land was dispossessed have not had it restored.

On a daily basis I try and work to get restitution of land dispossessed under apartheid. All that is required is the Jo'burg City Council to return it. This doesn't even require redistribution. It doesn't raise questions of willing buyer, willing seller.

*Why are we, 20 years after apartheid, having to have a ribbon cutting ceremony for that? It should have been automatic. It should have been done by decree.*

Shortly an announcement will be made. There will be media fanfare. You won't miss it, where the Premier of one of the provinces, I can't yet say who, will do some ribbon cutting and this will be a different kind of ribbon cutting. It will be ribbon cutting at a *dorp*.

The ribbon cutting will mark the first 100 of the Title Deeds which will be full title in a so-called black area where they will get full title, with Title Deeds, for free, with no requirement to pay unpaid rates.

No arrear rents, no transfer duties, no survey requirements or anything. They will be getting fully registered freehold titles for free, with no pre-emptive clauses and no strings attached. It will become the first local government where every black household will have the same title as white households, with no difference.

Why are we, 20 years after apartheid, having to have a ribbon cutting ceremony for that? It should have been automatic. It should have been done by decree. It shouldn't need upgrading and tenure reform. It should have been a deeming law; all black held properties hereby deemed owned, full stop.

As a person drives past a so-called black area, or what we call a township or location, you might not realise it, but the law around title is quite complicated. The titles there are

different somehow from when you drive past a predominantly white area. The differences are I think unconscionable. I am astonished that we are even having this discussion today. It seems to me that this should have been stopped even before 1994.

One of the myths is that 13% of the land was black owned. No, none of it was black. To this day it is owned by the government and allocated to the chiefs in trust, but it is not black owned land. Blacks owned 0%, not 13%.

What land blacks did have, was actually in so-called white areas, so-called black spots, some on long leases, but essentially none of it was fully owned. This land also happens to be 13% of the total. In 1913 it was 10%, it increased to 13%, and then all the consolidation land was added. So, even the number is wrong. However realistically it was wasn't ownership anyway. It wasn't black owned. It was government land.

Whites were said to have the other 87% of land. Again, a very strange notion. It presupposes government is white. It presupposes to this day that government is white. To this day the so-called distribution of white/black land still works on the assumption that government land is white land, but in fact it is even more bizarre, because officially municipal government land is considered white to this day.

What percentage blacks and whites have is actually unknown. No proper land audit has been done in South Africa. No one has the faintest idea, for example, how many black people have been buying land on the market. Last month FNB announced that more than 50% of their new mortgages were to black people. Where?

Why is that not included in the data in the numbers? And so myths just float around. How much land whites and blacks have today is just like any number you feel like saying. It is like an emotional thing. It is an ideological statement. It has got nothing to do with empirical reality.

We do have the government supposedly giving land or housing to blacks. No, it is



*What happened is that the government now redistributes land. It doesn't go to blacks. It goes to government. It redistributes from white farmers to the government. Blacks then become tenant farmers or they occupy it under some kind of pre-emptive or restrictive clause.*

not. The ghost of Verwoerd walks around the townships of RDP houses with a big smile on his face saying, if I had known the ANC would implement my policies, I would have handed over long ago.

Because what is happening to this day is that they are being allocated housing and if the wrong person is found there it is repossessed and there are forced resettlements taking place, not just in Duncan Village but all over the country right now. I have witnessed it in Vryburg where black people were taken from the shanty town, put in trucks, taken out to farms, put on plots in a complete old fashioned apartheid forced resettlement in 2003. No difference. None of that is ever done to whites. Why is it still done to black South Africans? It astonishes me.

Then the thing is these redistributions, the 30%, well, it started off 30% of the land. What did that mean? By area? By the nature of the land? By the value of the land? By the use of the land?

Everyone talks about area as if area matters. The Kalahari compared to Jo'burg CBD, for example. Land by area is actually an irrelevant number, completely irrelevant. Land by value and usage is what should matter.

What happened is that the government now redistributes land. It doesn't go to blacks. It goes to government. It redistributes from white farmers to the government. Blacks then become tenant farmers or they occupy it under some kind of pre-emptive or restrictive clause.

And then there's great pride when it is announced – not just by our Minister of Agriculture or Land Affairs, but also by the DA – that they are repossessing a house because the wrong person was found in occupation.

One land audit in the Western Cape found 95% of the people in RDP houses were not the person to whom it had been allocated. They were in fact therefore living illegally, terrified they will get caught and repossessed. We still have, to this day a kind of house

arrest in South Africa. If you are not living where the government put you, your house is taken away, from you or the person who had bought it from you.

You mentioned, as if it is a good thing that there's this informal market taking place in the squatter settlements. Yes, it is, but the trouble is, people are selling without tenure, without security, illegally, unlawfully and terrified.

There is a place, which will be announced in two weeks time, where occupants will be getting freehold title, but when the lawyers contacted them and asked them to come to their office and sign the documents allowing full title to their land, guess how many people arrived? Zero.

When we went to find out why, when the government wants to give you something worth R100 000, does nobody take the trouble to come in and sign? They believed it was a trap to catch them living in the wrong house.

Not one person was willing to come and sign. When eventually, with the help of churches and community leaders, confidence was regained, they came in and are signing and all getting full title. This is 20 years after apartheid ended.

What do we need to do? Despite some of the myths, I am not in favour of redistributing white farmland. The word 'land reform' means how many white farms do the government take and give to blacks? This is unimportant.

At best a few thousand people will be beneficiaries, and then they are not even real beneficiaries. The word 'beneficiary' offends me. It is patronising. In the areas where we are working, Alex and in Bakgatla Ba Mocha, we simply say this is conversion to freehold.

Our assumption is that it is their land, and all that's happening is that they are getting their title deeds. It shouldn't be this thing of beneficiaries being told where to live and being repossessed if they're not farming properly etc.

So what we say is: let all land where blacks are living permanently, formally informally

*What we want to do, in my view, is have full conversion for free. The next thing to do is to facilitate the market. I'm against government even playing a role here, because it is just going to mess up. The so-called failure of willing buyer/willing seller is nonsense.*

or semi-formally, become owned for free in fully, freely, tradable, unambiguous title, undistinguishable from white title. That's a radical thought. But if you believe in emancipated, liberated black South Africans, it is time to treat them like white South Africans.

At the same time as it is the land that matters, housing, is also important. But the interesting thing is that nobody has any idea of the numbers, i.e what types of tenure and title black land is held under over 100 different forms, according to former DG of Land Affairs Geoff Budlender.

In his book on land title in South Africa, he doesn't mention black land, and when I asked him why, he said because when he was DG, with all the resources at his disposal, by the time they got to over 100 different types of tenure and title, they gave up, so that our standard textbook on conveyancing in South Africa does not describe the tenure under which black land in South Africa is held, in other words, the majority of South Africans.

What we want to do, in my view, is have full conversion for free. The next thing to do is to facilitate the market. I'm against government even playing a role here, because it is just going to mess up. The so-called failure of willing buyer/willing seller is nonsense.

I hereby offer the government that I will buy them all the land they want. I will just go to an estate agent. It's like not a challenge to redistribute land. The reason they don't do it is simply because they are incompetent.

One of the things to do is to have first buyer exemption from formalities and taxes. The first acquisition of land should be for free: no transfer duties, no conveyancing fees,

no stamp duties, no electrical certificates. In the place where we're working, people living in a shanty have to get an electricity safety certificate. They have to prove that they've paid VAT. There is donations tax, because there's no purchase price, and it just becomes a nightmare.

We need an Act that says all black land is converted to freehold. Unambiguous, no restrictive clauses, no anything, and they are not beneficiaries, they are owners who are getting their ownership recognised. That's something like 8 million households in South Africa being acknowledged.

Then government can take its superfluous land. Nobody knows how much, it varies between 10% and 20% of South Africa's land area, and redistribute it. It doesn't have to actually have willing buyers/sellers. It can redistribute what it has already got. Then it can restore land, like in Alex, that it already owns. Just give them their title deeds.

*But black South Africans who acquire their first land should have to pay no duties, no costs, no deeds registry fees and no electrical safety, VAT and rates clearance certificates. All of the formalities that conveyancers get high on, should be abolished.*

Then you exempt first time buyers. They can be black, but doesn't have to be, if that's a problem. But black South Africans who acquire their first land should have to pay no duties, no costs, no deeds registry fees and no electrical safety, VAT and rates clearance certificates. All of the formalities that conveyancers get high on, should be abolished.

It is interesting to me that in South Africa the assumption is that benefits for blacks are what is done for them. Now there's only one economist I'm aware of, Vivian Atud, who is at UNISA, and who has actually done calculations on what she calls the 'transformation index' which she has not yet published, but has been researching the components.

What she's looking at is how much transformation has there in fact been? How many black people own properties registered in the deeds registry? How many black people actually own shares directly and directly? How many black people have credit cards and motor cars and, life and healthcare insurance policies, and what is the rate of change?

Her data shows, and this is going to be my closing point, that the transformation is actually quite remarkable by people who are using their freedom, not waiting for big brother to come and be nice to them.

Now we have our president telling us last week, as he has on various occasions, that nothing has changed since 1994. Now I find that really quite interesting. This must be one of the few heads of state in the world who says please vote for me, my government is as bad for you as apartheid was.

Of course things have changed. The ANC needs me as its propagandist. There has been spectacular change, and that spectacular change needs to be acknowledged in land, as it does everywhere else, and we need to make land markets free and functional.

I said this was the last point, but that was just because I wanted to put you off stopping me, so this is in fact the last point. The township (we call them townships in a patronising way, where most people have full freehold titles are Langa outside Cape Town, with about 80% full freehold. No pre-emptive clauses, no restrictions, no anything, and that's been the case for about a decade.

I went and did research. I travelled around Langa to see if there was a proper market, with mortgages, estate agents, property columns in the newspaper, 'for sale' and 'to let' signs, but there was nothing.

I went up to people with my colleague Themba, who lives there, and asked if they owned their house, which they said they did, but could not show me the title deeds. Sometime later we found all the title deeds in a filing cabinet at the Cape Town City Council.

So, the problem for us in South Africa is not that black South Africans will sell their land and become indigent and homeless or be mortgaged. The opposite is the case. To actually get people to understand that land is theirs and that they have the same freedom, respect, dignity and empowerment that white South Africans take for granted.

That's what we need for land in the new South Africa so that when I go to Langa I see estate agents and 'for sale' signs. I read about property trade in the local newspaper and the title deeds are actually in a filing cabinet at the Cape Town City Council.

What I'm saying is it's the mindset, the psychology that blacks are, and must remain, somehow different, and I'm sorry to say, I really want you guys, Monty, to actually just get rid of that legacy that we carry with us in our heads. Apartheid is in our psyche. We need to rid ourselves of that notion, and just say that from now on everyone is equal in the new South Africa. Thank you.

**CHAIRPERSON:** Thank you, Leon, as always, controversial. I've been an indulgent Chair, because we are running over time, so I will become stricter now. I'm wanting to open up the discussion and it doesn't have to be a discussion between the floor and the table here.

It can also be a discussion amongst people, and I want to ask you to be as concise as possible, and if there is a statement it must be a short one, and if it is a question, a focused one. We will take three questions at a time. If people can just identify themselves before they speak, I will be grateful. Thank you.



# discussion

**MR DA CAMARA:** *Manny Da Camara. One thing was mentioned very briefly, and then let go quickly, and that's the whole issue of food security. There is one statistic you can count on: South Africa's land mass. Only 18% is arable, and the usage of that land is very important if we are to feed our own people.*

*But here is the problem. The cost of starting a farm has multiplied tenfold. Even if you took a white person, and you said here's a piece of land – farm! 40 years ago they went and bought a tractor, a few pumps, an implement, some seeds, some fertilizer and off you went. You can't do that today.*

*The technology has outstripped the size of land and the kind of resettlement onto farms hugely. So what you have now is a problem. We are redistributing farmland and these days the technology and skills required to farm commercially is massive. Now, nobody is talking about skills and technology transfer and if we don't do that, land transfer becomes meaningless.*

**MR OPPENHEIMER:** *My question is for Mr Louw. My name is Mark Oppenheimer from Johannesburg Bar. You've set out an argument in favour of entrenching individual rights, which will allow people who are currently in possession of their homes to be able to sell these homes or mortgage them to obtain liquid capital.*

*Your fellow panellists have suggested that there might be something more important than the ability to transact, that there's a spiritual connection with the land, and that communities should be entrenched in that particular place because their ancestors were there, because there is something beyond an individual right. How do you respond to this?*

**THLABI:** *Thank you. My name is Thlabi. The first gentleman who spoke, was he asserting that technology has made farming expensive? Because that would be a cruel twist on things in 2013. Adding technology actually makes things expensive instead of making them cheaper.*

# question



*But the thing I want to understand, is it a case where we want black people to be restored to what they would have been in 1910? Or are they expected to have stayed where they would have been in 2011, whether they were farmers or rural inhabitants.*

*Actually it is not even about giving them land which they can trade in, in that even the idea that your land must be in the market to make profit is a value thing, not so much actually what people want.*

*It is rather a thing that we have established in the new society about what land is supposed to do and what it is supposed to do for you, whether it makes you a profit or it gives you a home. It is that actually black people want to be equal and have the same status as white people.*

*I'm trying to get at what the discussion we are trying to get at about land and restoration because also I remember Ms Gasa earlier spoke about, for example, what is going on in terms of the new Bill on rural areas and rural leadership so that actually it is reversing the gains that have been made by democracy and the Constitution around which women, for example, are leaders or landowners.*

*Or do we want to bring them back and take them back to a time in the early 1900s when they didn't own land or when they owned land? Where are we going with the real question about land and where people should be where people are?*

**MR KGOPANE:** *Thank you very much. My name is Mohlolo Kgopane. Leon, you have indeed set the stage ablaze with some of your comments. I'm fascinated by the way you seem to have raised some of these myths around land redistribution or repossession whatever it takes to label what South Africans want to achieve in ensuring that there's equity in accessing land.*

*But I'm also shattered that the host of historiography that is laced in our books is about these figures and numbers that are wrong. How do we reverse that because it is embedded in our ideological underpinning to pursue equality? It is always pursued under that. You seem also to be suggesting that we need to move away from that. But it is entrenched. That's my worry. Thank you.*

**CHAIRPERSON:** *There are some responses from the panellists.*



**MS GASA:** It is quite interesting because one second I tweeted that this is a very weird panel. One second I find myself agreeing with Leon Louw and then the next second I find myself totally uncomfortable.

I think, firstly, it's a myth that there's a myth that the land question started in 1913. When I started I said there's a whole century that precedes that and that takes us to the historiography because if we are blind to the way in which in fact historians have disputed the fact that 1913 it all started there and that's it, then we are missing a whole lot of things.

One of the things that we are missing, which is very important, is the fact that there were groups of African people who actually owned property – the syndicates that was started by Pixley Ka Seme and the incredibly interesting case of four gentlemen, whose names are still not known, who bought a piece of land in Johannesburg.

This is important because those who argue around communal land and this congealed identity that we are given, particularly as African people, that we've always wanted communal land and not private property.

The second issue that I have a problem with is that even as we have a conversation about wanting to revisit how we talk about land, we inadvertently reproduce apartheid spatial geography even as we claim that we do not want to do so. We refer to Alex. We refer to peri-urban South Africa.

We forget completely about rural South Africa which, by the way, is not arid Ingonyama Trust holds one of the biggest land assets, and our inability to see that which is beyond our line of vision means that the new and old forms of dispossession continue.

It is no accident that President Zuma has his villa in Nkandla which is owned by Ingonyama Trust, which, by the way, was a gift from the national government to the former IFP on the eve of transition. This is where the rubber hits the tarmac.

When you look at Ingonyama Trust, and I'm using that as an example, right now, there are new coal deposits that are being discovered. Right now, communities have written to the administrators of the trust and they have not asked for beneficiation.

They have not asked for any of these funny things that we talk about. They have asked simply that what is contained in the SLPs

# Comment



# comment

that the new coal mines are going to be bringing into the communities. What is the response? The response is “it is none of your bloody business. Go and talk to your traditional leaders”. It is there. It is in court.

What am I saying? I’m saying that until we go back and talk about land not only in terms of land use, be it agricultural, arid, fertile or containing minerals, and until we talk about the intersection between what we think, what we remember, what we talk about and in whose hands the land is, there are so many distortions of the figures, including the 13%. I agree that the State actually holds quite a lot of land right now.

But I also feel whatever processes that preceded 1913, and some of them were very violent on all sides, are important, not only symbolically. It is an important moment in history, and every historical process has one. I also said that without subsequent laws, the 1936 law, which basically said the natives belong here, the 1913 laws probably would not have been as effective as they were.

I want to go back to where I started, and I want to argue that tomorrow there’s a mandate discussion on the Traditional Courts Bill in parliament. There’s a conversation on the new Amendment Bill of 1913 which we were told that it was being revised, so that it will go back to before 1913.

The Bill is still stuck in 1913. What does it do? It has flowery language about families being democratic units. But actually what it does is put further stamps of approval on so-called tribal or traditional leaders, so that they can own land. Until we talk about urban land and rural land in equal terms, we are not going to be talking about the economy, whether you talk about food security or not, because the minerals are in the land that is called traditional land and, that is where the wealth of this country is.



**MR ZIBI:** Thanks. I just want to make a quick point to Leon, and that is there’s one thing about free markets, which I also believe in, and that is that they do not have a moral index. I worry about where those people who sold their RDP houses live now.

Do they live in another squatter camp, and will have to stand in a queue for more houses, and have we therefore solved the housing problem? We need a system that will allow us to be able to tell who has got a place to live and who doesn’t, because in effect, what we have under the current system, is we believe people have houses when they don’t, and there are people who believe they do not have houses when they in effect do. The question is, what do you do about a serial seller?



**MR NARSOO:** I was intrigued by the question as to whether we want to reconstitute ourselves back to 1913. I think it is an important question. I think there are questions about the South African Constitution which

is a very modernist Constitution around a whole set of practices and the way people see themselves.

So there is that tension. The tension of many people saying I am who I am because of my history, but also having to face being who I am because of what I am now. I think there's always going to be a tension, and I think the older you get the more you start looking to your history. The younger you are you start looking to the future.

But I think it's an important question. We've got to ask what this restitution is for? Why do we want this? Is it because of historical injustices, or are there more pressing problems at the moment?

Hernando de Soto might argue that you unlock people's value if you give them title deeds. The problem with where he came from in Peru, is that the title deeds were to places up in the mountains which had no value.

We've got to understand the power relationships and the values that we are dealing with. But it is a question that I think reflects a very important way of looking at things, and makes us ask why we're doing these things, if economies have changed etc.

I just want to make one other point and I'm taking advantage because I didn't have a chance to make the point earlier on. I think the point that Nomboniso is making that different rules and systems sometimes relegate people to being second class citizens.

And while I might talk about informal markets etc, it's very important that we understand that we need the rule of law when we are talking of security of tenure, because very often issues of power, money, gangsterism etc, means that the poor are not protected

when they are subject to certain laws. Also you either you have a good or a bad chief, a good or a bad neighbour, and I think the rule of law in relation to this becomes important.



**MR LOUW:** Just on food security, the richest place in the world does not produce a single carrot or have a single sheep. The way you have food security is to be rich. I produce no agricultural products at all

and I have complete food security and so it goes with Johannesburg or with Gibraltar and Singapore and some of the richest places on earth, which don't have a single plant. So food security is about being wealthy.

Now having said that, and farmers might not like me for saying so, there's another reason you want good agriculture. Not for food security. That's a contentless cliché. You want it because you want to have a good economy. You want prosperous farmers. You want farming being like any other enterprise: rich, successful, prosperous, creating jobs, big businesses, agribusinesses etc.

So, I'm all in favour of agriculture, because I think agriculture in South Africa is a good way to make us rich, and that's what we want – we want to be rich. You cannot raise living standards of the majority of people without raising the amount of wealth in the country.

You can redistribute to your heart's content and you will be redistributing poverty. If you want wealth you must have a high growth economy, including prosperous, high growth farming.

Having said that about farmers, and I know that I'm probably going to get slaughtered by farmers for saying we don't need food security or the way to get it is to be rich, let me also say though that there is no reason I have ever heard as to why white farmers ought to be victimised.

Some white person who went off and bought a farm through the Farmers Weekly or Landbouweekblad should now be paid

less than the farm he is worth. There is no logic to that. I don't understand it. It seems to me that what you want is to respect everybody's property rights especially black South Africans.

We haven't got there yet and we should not be talking about somehow eroding white property rights without actually saying, no, the issue to be done is restoring and recognising and entrenching black property rights.

Mark Oppenheimer, yes, you raised an issue. It is quite an important point and I want to deal with that. The CLaRA, the Communal Lands Right Act idea -- I'm sorry, your plea is depending on how you see it to say actually emanated from us, and what we suggested was unfortunately not captured in the Act. It got mangled, as you well know, as a counsel that this tends to happen.

Our view was as follows that what the government should do is to empower tribal communities to decide for themselves. Now we have had one case study, which I mentioned, Bakgatla Ba Mocha Ba Mmakau, and what happened there is every single household was surveyed by local learners.

They went and did a survey with open-ended questions about their priorities. 98% said they wanted title to their land. They were not talking about communal commonage, they were talking about urban plots, settlements, kraals, arable allotments and so on.

The chief, who was the former Chief of Agriculture in the area, was against this. He gave an impassioned speech to the community, saying why they shouldn't have this. They all stood up, one after another, and said it is what they wanted, and he said, as a chief, that this is contrary to the notion that chiefs are despotic. He said he had to go along with what the community wants, and signed the tribal resolution for full freehold title for everyone, and they now have it. They actually all now have full freehold title deeds.

When people say the chiefs won't agree I always say "who asked them?". We have asked many chiefs including Patekile

Holomisa, the Chairman of Contralesa. I actually wrote an article in their magazine, in which they said that they do not have any in-principle objection to full, freely tradable freehold.

Now, as far as spiritual attachment to land is concerned, what we did was to have a condition of title, saying the land can be sold only to other members of the same tribe.

Or if it's going to be sold outside the tribe, like to someone who wants to build, for example, a supermarket, a filling station or a Vodacom tower, they have to get a tribal resolution. That's what CLaRA should have done.

We are saying "don't upset the traditional community, empower it". What will happen is that they will in fact choose the system that is best and most suited to their conditions.

Now let me mention some of the myths and how tenacious they are. I spent this morning in Winterveld, which is a very interesting area. It happens to be where Dr Sam Motsuenyane, the former founder and doyen of NAFSOC lives, and he's a farmer and agriculturalist, and farms amongst other things, citrus. He has 180 independent citrus farmers, all farming citrus through a co-op, and they all have full freehold title.

It used to be called a black spot. They now have title deeds. That land has been traded forever, long before 1913. It has never changed. It never got possessed under apartheid. That was one of the black spots that never got 'cleared', and to this day there are prosperous commercial farmers.

I also want to mention another case, the former Minister of Justice, Penuell Maduna, is now a big agriculturist. He is into cattle farming, and he has something like 60 black independent commercial cattle farmers, and around 30 000 head of cattle under his control.

Now here we have people with full freehold title in so-called black areas, who are buying and selling land, and operating like any white farmer. Why this is not celebrated as

a model for the rest of South Africa, I don't know. It seems to me that no one knows about it.

When I walk out of here you will notice that my shoes are dusty. That's Winterveld dust. I was close to the land this morning. How do you get rid of these myths? I don't know.

I get driven nuts every time I hear that 13% of the land was black. Zero was black. Where blacks actually lived was much more than 13%, because it included all the urban townships and settlements. The 13% is a nonsense number, with no relevance to anything. It's a sort of axiom of truth that floats around as if it is true, like almost every empirical statement.

My contribution to the Helen Suzman Foundation's *Focus Magazine* is about myths relating to land, and if you want to have a disturbed night's sleep, read my article. It will traumatise you if you stay awake until it is finished.

**MR SPARKS:** *Allister Sparks. I had the misfortune or the great good fortune, depending on how one views it, of being in the press gallery in the heyday of Hendrik Verwoerd, and I recall very clearly the speech he made on one occasion, imploring his supporters, who were by far the majority in parliament, to take apartheid as far as possible while they had the chance, so that it could never in the future conceivably be reversed.*

*As I drive around the country a good deal, and go through rural areas (I grew up in one), I get a horrible feeling that he pretty well achieved a good deal of that. It is very, difficult to unravel what has been done over all these years, and going way back before Verwoerd.*

*I still regard the Land Act as the original sin of white South Africa. It is not the original sin of course, but I like the phrase anyway. I mean, the sins began long before that.*

*I really liked some aspects of Mr Zibi's presentation, because it seems to me that we cannot be too idealistic. It is certainly beyond my imagination that we can really*



*unravel all of that and achieve perfection. We can theorise and academise, if there's such a word, to our heart's content.*

*But in reality, right down on good earth, I think we have to settle for the best we can practically achieve. There are a lot of things about the Free Market Foundation that I disagree with, but I go along with a lot of what I've heard Leon Louw say here today.*

*For example, I look a lot at the Transkei. I grew up on the banks of the Kei River, and I'm astonished that none of that fertile land, which also has a decent rainfall, belongs to black people. That is State land.*

*I can remember the apartheid government, for God's sake, saying to the people of Soweto that anybody who had rented municipal houses for 20 years had it given to them.*

*I don't think they gave them title deeds. I don't know what happened after that. But that surely is the way. It is the Hernando De Soto way, and I heard earlier that Peru wasn't such a success because all that land was up in the mountains.*

*But as Ms Gasa has pointed out today, Peru is where the mines are. That's where the copper is, and Peru's growth rate this year*

# Comment

# comment



is 7%. I think it's the highest in the world, followed quite closely by Chile, which is much the same. Those people were liberated. They did get title deeds.

Fast-forward a number of years, and I can recall (as I've been around reporting on this wretched country for an awfully long time, and watching it mess itself up and continue to do so) year after year asking whoever happened to be the Minister of Housing or of Agriculture, and how many occupants of RDP houses had title deeds. I never got an answer

I bombarded poor Lindiwe Sisulu, who was Minister of Land Affairs at the time, and eventually she came to me privately and she said that the real problem was that it was not in the hands of her department, but the Department of Agriculture. But I think the truth is that they didn't get title deeds because those were not their houses. They were State owned houses.

Why can't we give all of the 16 million people living in the old Bantustans, the land they're living on? It is State land. The chiefs control it. The chiefs can chuck any of those people off at a whim. Their powers, I think, are abominable.

*The Traditional Courts Bill that Ms Gasa has been talking about is an abomination. Pay those chiefs, for God's sake. Let them live like constitutional monarchs if they want to, but take their power over their people away from them.*

*Liberate those people. I don't know why all of the land that the people living on in all of the Bantustans can't simply be given to them. Let them become peasant farmers and at least be able to feed themselves.*

**CHAIRPERSON:** The last intervention, then I must bring it to an end.

**COMMENT:** Thank you. My question is that we know that the government and the chiefs and indunas are black, and we are saying that they own the land. Are we still saying the land is not in black hands? That's my question.

*My other question is to the gentleman from Human Settlements. There's a new trend in Soweto, where I live, to build townhouses. They are the first of their kind, and I happen to be the chairman of the body corporate. There are 950 units. How do I tell a person who owns a unit that the land is not theirs, but belongs to the body corporate? Thank you.*

**MR NARSOO:** Chair, I'm not actually from the Department of Human Settlements. There has always been a problem trying to understand the title deed and rental housing issues, and what I want to suggest is that after we finish today, we can have a discussion around that.

**CHAIRPERSON:** I must bring this to an end, so I want to thank our speakers for their extraordinary and diverse contributions.

I think we were all looking at the problem and making suggestions as to ways forward.



*"I stand for simple justice, equal opportunity and human rights: the indispensable elements in a democratic society – and well worth fighting for."*

*Helen Suzman*

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