

Transfer land from the state to the people now

by Leon Louw

Black South Africans in historically black areas (HBAs) *hold* but, with rare exceptions, do not own about 10 million parcels of land. White South Africans in historically whites areas (HWAs) *own* about five million parcels. Denial of the right to own land was one of the cornerstones of apartheid oppression, and it's still with us. Holding without owning land has negative consequences; land ownership allows people to buy, sell, let, mortgage, develop, subdivide and consolidate it, all of which ensures that the country's most valuable asset is allocated and utilised efficiently. Without these rights, people in historically black areas remain at an unconscionable disadvantage.

Black South Africans may be allotted urban or rural land if they are lucky. Often they must pay bribes or be adult males in tribal villages. Then they're stuck with it even if they live elsewhere and their land remains idle or under-utilised. They can transfer their land only by way of complex processes, usually subject to severe restrictions, and without proper compensation for land or improvement value.

The problem is that land in HBAs, where most black South Africans live and are likely to live for many years, is still owned by the state and held under a complex array of restrictive forms of 'apartheid' title which deny them the right to deal with their land as whites do. In this important sense, whites are still freer than blacks.

Verwoerd's 'native affairs' laws still govern land tenure in most HBAs and reduce it to what Hernando de Soto in his celebrated book *The Mystery of Capital* calls 'dead capital'.

One of the first acts of transition was the Upgrade of Land Tenure Rights Act No 112 of 1991, which promised conversion of apartheid land tenure to ownership. The limited extent to which there has been 'tenure upgrade' is undocumented and has been prohibitively costly.

There are many reasons for the failure of tenure upgrade policy, ranging from bureaucratic inertia to perverse vested interests created by land laws that confer substantial arbitrary power and status on some officials, and require prohibitively costly and complex intervention by land surveyors, conveyancers, town planners and developers. Given 16 years of failure, the only feasible solution is for government to override vested interests and upgrade black land tenure by simple statutory decree at best, or by substantially streamlined procedures at worst.

Apart from land held under apartheid tenure in HBAs, superfluous state land is a second huge source of 'dead capital', which at virtually no cost, can be redistributed to landless black South Africans. Most landless black South Africans are women who were denied access to land by virtue of not having 'section 10 rights' under apartheid, and discriminated against under tribal law. If the government uses less than 10% of its superfluous land, it can provide all landless households with a free plot under a 'one family one plot' programme. Most of this land *by area* is reflected in the Deeds Registry as belonging to the Departments of Land Affairs and Works. Most of it *by value* is probably owned – though there is presently no way of knowing – by a multiplicity of government departments, agencies and parastatals at all four levels of government,

A plot of land investigated by me twenty years ago in Hyde Park, one of SA's highest value suburbs, is a typical example of thousands of mysterious 'reserved' properties throughout

the country. The Education Department, for whom it had been reserved in terms of 'conditions of establishment' many years ago, knew nothing about it. The government structure for which such land has been reserved as a pre-condition for development is often unaware of it. Land not regarded as appropriate for redistribution could be sold and enormous revenues generated that could be used to acquire land for black South Africans elsewhere.

No one knows what proportion of state land by value, area or locality is superfluous or under-utilised. It is clear that statements, some purporting to be backed by sophisticated research, massively understate the amount.

Instead of the current national obsession with how much 'white' land can or should be redistributed to blacks, and whether or not it should be confiscated or purchased, much more can be achieved, more expeditiously, and at virtually no cost, by the simple process of upgrading apartheid tenure and redistributing superfluous land already owned by government. South Africans should learn from Zimbabwe, where to this day the majority of people living in HBAs ('townships', 'locations' and 'tribal trusts') still do not own their own land, and their government, like ours, owns a massive proportion of all land, much of which is superfluous. There, as here, virtually no attention has been given to the fantastic potential for black economic empowerment and for national prosperity of pro-market land reform.

Tenure upgrade and superfluous state land redistribution would be an act of empowerment and a boost to the economy far in excess of any other proposal currently under consideration. It would be racially harmonising, morally imperative and economically progressive.

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