

## VOTERS VERSUS INVESTORS

8 AUGUST 2018

The announcement on 31 July by President Ramaphosa that the ANC will support a change in the Constitution regarding expropriation of land without compensation was truly dramatic. It will be the first change to the Constitution's Bill of Rights since its adoption. (The Constitution itself has been changed 17 times.)

### WHY NOW?

The origin of this change can be traced back to 28 February 2017 (see our note of 14 March 2017). On that day Julius Malema tabled a motion in Parliament that the Constitution should be amended to enable expropriation without compensation. This followed rhetoric to that effect by the then Minister of Land Affairs, Gugile Nkwinti, and then-President Zuma. The EFF was willing to add its 6% of the vote to the ANC's 62% to create the two-thirds majority needed to change the Constitution. However, the ANC spoke and voted against the motion. It was defeated by 266 votes against 33. Eight opposition MPs (2 from Agang, 4 from the UDM and one each from the PAC and APC) voted with 25 EFF members in favour of the motion. The rest of the House voted against it.

Since then, the ANC has been getting flak from its base for this stance. Some ANC members even came out in public, saying that the party should not have voted against expropriation without compensation. (See for example an op-ed in the City Press on 5 March 2017 by the then deputy, now minister of Public Service & Administration, Ayanda Dlodlo.) Recently Business Day reported (3 August 2018) that internal ANC polls indicate as many as 40% of the ANC base is strongly in favour of the Constitutional amendment. Even if the poll is only half right, it is a serious electoral threat to the ANC (and not from the DA). The recent hearings all over the country on the matter have certainly put the intensity of emotions around this matter on public display.

So, it is perhaps unsurprising that at the ANC lekgotla, President Ramaphosa reportedly stood up and said the "ANC should be seen to be taking the views of the people on board". The rest, as they say, is history.

### POLITICAL MASTERSTROKE

It is significant that President Ramaphosa himself took the initiative with the announcement. He certainly strengthened his hand inside the party by appropriating (without compensation!) the opposing faction's position. In December 2017, President Ramaphosa was elected on a 52/48 slate. Last month I argued that when we look at opinion polls, developments in the ANC provinces and David Mabuza's position, President Ramaphosa is probably now closer to a 60/40 position. After the land announcement, he would be even stronger, because he has deprived the Zuma camp of a major issue. By the same logic he strengthened the ANC against the EFF. He deprived them of a major issue too. It is the problem of all opposition parties – the governing party appropriates their position and they are then left somewhat hapless.

### ECONOMIC BODY BLOW

However, has President Ramaphosa lost the economy with his expropriation-without-compensation (going by the new acronym EWC!) announcement? In the July newsletter I argued that his challenge is to convert his personal approval ratings into business confidence. The EWC announcement has certainly not done that. Businesspeople, and not just farmers, are very despondent. Word from overseas is that investors simply do not understand EWC and have little appetite to invest. None other than one of his four investment ambassadors, Trevor Manuel, has already alluded to the difficulties EWC is creating for investment. Some follow-up action is needed from President Ramaphosa if he wants to counteract this negativity.

Given the constraints on both fiscal and monetary policy, investment is about the only lever President Ramaphosa can pull to revitalise the economy. He has quite correctly focused on that since his election in February. However, I cannot imagine him going to his investment summit in October with the EWC albatross around his neck.

Balancing these two, EWC and investment, may be the greatest challenge of President Ramaphosa's tenure. Expropriation without compensation is really about voters versus investors. Voters vote at the ballot box, investors with their cheque books. Can President Ramaphosa get both to vote for him? That depends on the detail.

### IT'S THE DETAIL THAT MATTERS

Both Ramaphosa's and the ANC's rhetoric says that the Constitutional amendment will **clarify** the legal position around expropriation without compensation (EWC). Sounds good, but we all know the rule: heaven is in the principles, hell in the detail. It all really depends on the detail of the proposed Constitutional amendment. It seems to me the test is whether the amendment will grant more power to the state to expropriate, or whether it will clarify existing powers. The difference is huge. Will the safeguards of Section 25 be abolished, or will the intrinsic powers of

Section 25 be spelt out in more detail? President Ramaphosa and the ANC are certainly trying to argue the latter. The detail will tell.

The second issue is how long it will take for that detail to emerge. Will it be before the 2019 elections or only thereafter? The parliamentary timetable between now and the election is crammed and the procedure to change the Bill of Rights is long. The change may only take place after the election. The longer uncertainty persists, the more confidence will deteriorate, and the more investment will be harmed.

### STRONGER PROTECTION FOR PROPERTY RIGHTS?

It is clear that expropriation without compensation is part of a much bigger story than just short-term politics. It is a story with a long history, a story of exclusion and marginalisation. It is a story that is hugely important for many ordinary South Africans. In March last year I wrote: “The (land) issue will not disappear when Mr Zuma goes, as land ownership is a real problem and politically the EFF will be exploiting it.” Indeed, the issue has not gone away, even if Zuma has.

Addressing the concerns of ordinary South Africans successfully means that protection of property rights will not only come from the Constitution, but also from a broad consensus in society. If only the Constitution stands between property rights and the deprivation thereof, it is not a very strong defence. Support for property rights from the broad base of the population will strengthen those rights for all, not just for those who currently own property.

This is the test of a successful democracy “that it works for both voters and investors. But this ideal world will only be realised if the Constitutional amendment balances the interests of both these constituencies. To know that we will have to wait for the detail.

### SO WHAT?

- ✎ The ANC has been on the back foot on the land issue since February 2017 when it voted against the EFF’s expropriation motion in Parliament.
- ✎ Now, 17 months later, President Ramaphosa took the initiative at the NEC meeting to “take the views of the people on board”.
- ✎ It was a political master stroke against his adversaries both inside the ANC and in the EFF, but it was at the risk of dealing the economy a body blow.
- ✎ It is all about confidence, which in turn will determine investment.
- ✎ How he balances the opposing interests of voters and investors will determine the success of the move.
- ✎ If he wants to make his investment summit in October a success, the detail of this balancing act will have to be revealed before then.