

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

THURSDAY, 15 NOVEMBER 2018

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ANNOUNCEMENTS

National Assembly

The Speaker

1. Message from National Council of Provinces to National Assembly in respect of Bills passed by Council and returned to Assembly

(1) Bill amended by Council and returned for concurrence on 15 November 2018:

- (a) **National Health Laboratory Service Amendment Bill**
[B 15D – 2017] (National Assembly – sec 76).

The Bill has been referred to the **Portfolio Committee on Health** of the National Assembly.

2. Referral to Committees of papers tabled:

(1) The following papers are referred to the **Portfolio Committee on Transport** for consideration and report. The Report of the Independent Auditors on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

- (a) Financial Report of the Air Traffic and Navigation Services Company Limited (ATNS) SOC Limited for 2017-18, including the Report of the Independent Auditors on the Financial Statements and Performance Information for 2017-18.

TABLINGS

National Assembly and National Council of Provinces

1. The Speaker and the Chairperson

- (a) Monthly Financial Statements of Parliament – October 2018, tabled in terms of section 54(1) of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No 10 of 2009).

2. The Minister of Energy

- (a) 2018 Third Quarterly Report of the National Conventional Arms Control Committee (NCACC) for July – September 2018, tabled in terms of section 23(1) (c) of the National Conventional Arms Control Act, 2002 (Act No 41 of 2002).

National Assembly

1. The Speaker

- (a) Petition from residents and traditional leaders of Ward 7, Maruleng, Limpopo, calling on the Assembly to investigate the availability of water in the area, submitted in terms of Rule 347 (Ms D Van der Walt).

Referred to the **Portfolio Committee on Water and Sanitation** for consideration and report and the **Portfolio Committee on Cooperative Governance and Traditional Affairs**.

COMMITTEE REPORTS

National Assembly and National Council of Provinces

1. Report of the Joint constitutional review committee on the possible review of Section 25 of the Constitution, Dated 15 November 2018

1. INTRODUCTION

“Review Section 25 of the Constitution and other clauses where necessary, to make it possible for the state to expropriate land, in the public interest without compensation, and propose the necessary constitutional amendments where necessary. In doing so, the Committee is expected to engage in a public participation process in order to get the views of all stakeholders about the necessity of, and mechanisms for expropriating land without compensation”

The Constitutional Review Committee (CRC) was mandated by the two Houses of Parliament [National Assembly (NA) and the National Council of Provinces (NCOP)], as outlined in the resolution stated above, to embark on a process to establish the views of the public on the possible review of s25 of the Constitution to allow for the State to expropriate land in the public interest without compensation, and mechanisms for expropriating land without compensation. In doing so, the Committee was expected to engage in a public participation process in order to get the views of all stakeholders about the necessity of, and the mechanisms for expropriating land without compensation. Sections 59(1)(a) and 72(1)(a) of the Constitution mandate and provide for the NA and the NCOP to facilitate public involvement in the legislative and other processes of both Houses and their committees. The Committee therefore embarked on an extensive public participation process by conducting public hearings, calling for public submissions and oral submissions by members of the public to the committee.

The terms of reference for the assignment were derived from the resolutions of the two Houses of Parliament. The guiding questions for the assignment were the necessity of, and mechanisms for expropriating land without

compensation. The Committee had to devise a strategy to ensure the successful completion of the task before it and report to the Houses of Parliament. The following sub-section focuses on the method adopted by the Committee to complete the task and/or assignment.

2. METHODOLOGY

This section outlines the process adopted by the committee in responding to the assignment conferred onto it by the Houses of Parliament. Public participation was key to eliciting the views of the public on the possible review of s25 of the Constitution and establishing mechanisms for expropriating land in the public interest without compensation. Various forms of public participation approaches were adopted by the committee, i.e. Public Hearings, Written Submissions, and Oral submissions to the committee.

2.1 Public Hearings

Public hearings were held in all provinces targeting certain districts and local municipalities/towns in those districts, see Table 1. Public hearings in provinces were held from the 26 June to 4 August 2018. The Committee conducted public hearings over a period of six weeks.

In order to enable the committee to conduct this work within the available time and to broaden coverage, Members of the committee were divided into two groups of 11 Members in each group. One group focused on inland provinces whilst the other went to coastal provinces. Public hearings were held simultaneously by both groups. The Committee spent at least three to four days per province visiting about three to four areas/towns per province. The Committee sought to listen to and/or engage members of the public on the necessity of, and mechanisms for expropriating land without compensation.

Prior to Public Hearings

The Committee hosted a preparatory colloquium in order to workshop s25 of the Constitution, its origins and progress made through implementation of s25. The colloquium explored both successes and limitations of s25, especially interpretational issues and implementation challenges. The colloquium laid a foundation for Members to engage with the inputs from members of the public.

The Committee also deployed a team of public educators to selected districts across all the nine provinces of South Africa to conduct public education on s25 of the Constitution. The main aim of public education was to raise awareness of the relevant clauses in s25 in order to enable members of the public to participate meaningfully in the discussions on s25 of the Constitution. Public education team also used that opportunity to conduct workshops on how to make oral submission on a complex matter in a short allocated time, and informed members of the public about the committee's public hearings programme, especially the relevant dates and venues for the public hearings.

The Communications Section of Parliament supported the committee by sending out media statements on the public hearings to be held in different areas of the provinces. In addition, the co-Chairpersons gave interviews to various media companies on the task of the committee with regards to possible amendment of s25 of the Constitution, including public submissions, both written and oral. Parliament also took reasonable steps to ensure that as many people as possible attended the public hearings. It organised transport for members of the public to be transported from various districts to the selected venues where the public hearings were held.

Facilitation of the Public Hearings Sessions

The public hearings started from 11am to 4pm and beyond depending on the number of people who would still be on the queue waiting to express their views on the matter. The 11am to 4pm timeframe therefore only served as a guide for the public hearings. The co-Chairpersons always started the hearings with an explanation of the background and purpose of the public hearings and laying out the rules of engagement. The approach was helpful to ensure that the public hearings were orderly. Members of the public were

urged to be patient and tolerant of each other's divergent views. Every person on the floor to address the committee was given an opportunity to speak without intimidation. The co-Chairpersons protected all speakers against intimidation.

Public hearings were conducted in a form of town halls style meetings in which the key principle followed was that it was about both sharing information about s25 and what it is about, as well as receiving inputs from members of the public, their views and perspectives in so far as it allows or does not allow for expropriation of land without compensation. To sum it up, the key focus was involvement and participation of as many people as possible at particular sites of public hearings. In that way, the committee afforded citizens of South Africa an opportunity for voicing their views and perspectives, and therefore having a say in the direction which the Country was going to take in so far as redressing the injustices of the past is concerned.

The co-Chairpersons, across the sites, ensured that there was a focus on the subject matter at hand and encouraged the speakers to indicate the necessity of, or lack thereof, of constitutional amendment to allow for expropriation of land without compensation. The speakers were encouraged, in their inputs, to transcend the usual and easy 'yes' or 'no' responses but to provide reasons why they thought it was necessary or not necessary or whether the current framing of the Constitution allows or does not allow for expropriation of land without compensation.

The co-Chairpersons read out and/or distributed copies of s25 of the Constitution to the public in order to ensure that there was awareness and understanding of this section. Where required, the reading of s25 was translated into the preferred languages to ensure fairness and enhancement of the understanding of the issues that the committee was concerned with. All speakers were given at least 3 minutes within which to state their position, share their views and make proposals in their own languages. The co-Chairpersons timed every speaker in order to ensure fairness to everyone that spoke and an indication was made to the speakers when their speaking time was over.

The committee received inputs from individuals, representatives of political parties, community leaders, traditional leaders, property owners, including land reform Communal Property Associations (CPAs) and Trusts, Non-Governmental Organisations (NGOs), Community-Based Organisations (CBOs), organised agriculture, lobby groups, trade union movements, researchers, traditional healers' associations, faith based organisations and other members of civil society in general.

Table 1: Distribution of Provinces and Towns for public hearings

Week	Delegation A		Delegation B	
	Province	Town	Province	Town
26 - 30 June 2018	Limpopo	Marble Hall, Mokopane Tzaneen Thohoyandou	Northern Cape	Springbok, Upington, Kuruman Kimberley
01 - 04 July 2018	Mpumalanga	Mbombela Ermelo Middleburg	Free State	Botshabelo, Welkom Phuthaditjhaba
17 - 19 July 2018	North-West	Taung, Mahikeng Rustenburg	KwaZulu-Natal	Vryheid Jozini, Pietermaritzburg Kokstad
26 - 28 July 2018	Gauteng	Westonaria Sedibeng Pretoria West	Eastern Cape	Umtata, Queenstown East London Jansenville
01 - 04 August 2018	Western Cape	Oudtshoorn, Beaufort West Cape Town	Western Cape	Citrusdal, Swellendam Cape Town

2.2 Written Submissions

In April 2018, the Committee put an advertisement in various national and local newspapers calling for members of the public to make submissions on the necessity of, and mechanism for expropriating land in the public interest without compensation. Members of the public were given until the end of May 2018 to provide the Committee with their views.

The date was subsequently extended following requests from some organizations to extend the closing date for submissions. Consequently, the date was further extended to the 15th June 2018 to enable further submissions to be taken by the Committee. The Communications team ensured, through the provision of interviews by co-Chairpersons and other means, that members of the public were aware of the extension of the submission date.

The submissions were received by Parliament in two ways viz. emails and hardcopies delivered to Parliament by the respondents. Emails and hardcopies were sent and/or delivered to the committee secretary as directed by the advertisement. Furthermore, certain respondents brought memory sticks with information brought in hardcopies.

The submissions received through a public call for submissions were managed by an external service provider after the closing date. The terms of reference for the service provider were as follows:

- **Response Handling:** that receipt of submissions is acknowledged mainly through emails, short messaging services (sms) and any other way possible.
- **Indexing and Data Capturing:** the information on members of the public is indexed and captured.
- **Data analysis and Report Writing/Production:** The above information must be analysed and a report written on the substance of the submissions. The analysis should also provide the committee with information on how many people were in support of or against the amendment of s25 of the Constitution. What are the arguments advanced by the respondents in support of or against the amendment of s 25 of the Constitution?

The data was prepared in the following manner to enable analysis to be conducted. The following fields of entry were aggregated from all the submissions received:

1. First Name
2. Last Name
3. Decision (“Yes, change the Constitution”; “No, don’t change the Constitution”; or “Undecided”)
4. Message (Open text)

The following data points were analysed:

1. Total number of submissions
2. Total number of “Yes” decisions
3. Total number of “No” decisions
4. Total number of “Undecided” decisions
5. Themes of open text messages

As required, the service provider analysed the information as noted above and produced a report. The summary of findings is presented later in this report.

2.3 Oral Submissions

During the public call for public submissions described in 2.2 above, members of the public were asked to indicate whether they would like to make oral submissions to the committee. Initially, 42 individuals/organizations were identified for oral submissions. Later, the service provider provided the Committee with a list of 120 individuals/organizations that had requested an opportunity to make oral submissions. The support team checked for duplications, whether the submission was substantial, and established whether the respondent still wanted to come and present before the Committee. The 42 individuals/organizations that initially presented formed part of the list of 120 respondents provided to the committee by the service provider.

The first oral submissions took place in Parliament from the 4th – 7th September 2018. All 42 individuals/organizations were requested to come and address the committee. The views of these respondents were captured in the report on public submissions.

After deliberations on the list of 120 names provided by the service provider, the committee reached a consensus to reopen the oral submissions process and requested the committee secretariat to determine those who wanted to present before the committee, check whether the submission was substantive and contact the concerned persons/organization about presenting before the committee. A total of 21 respondents came to Parliament to make further submissions to the committee in addition to the 42 that initially came to present to the committee. These oral submissions took place on the 25th and 26th October 2018. This number brought the total number of individuals and organizations who made submissions before the committee to 63. In all, the committee spent six (6) full days listening to the presentations from members of the public.

The *modus operandi* during these sessions was to give presenters 10 minutes to present their views followed by questions from members of the committee. Once the questions were answered and/or points clarified, a session will end. This process was repeated for all presenters.

Having followed the methods described above for gathering the views of the public on the possible review of s25 of the Constitution, the next subsection provides a summary on public hearings, written and oral submissions to the committee.

3. SUMMARY OF PUBLIC SUBMISSIONS ON THE POSSIBLE REVIEW OF S25 OF THE CONSTITUTION

The Resolutions of the two Houses of Parliament mandated the committee to ensure public participation in its work and processes. In response to this mandate, the committee conducted public hearings in all provinces, called for public submissions and lastly called on individuals and organizations to make oral presentations to it. This section of the report presents a summary of submissions from the public participation process undertaken by the committee.

3.1 Public Hearings

Members of the public expressed their views on whether or not s25 should be amended and put forward their suggestions on mechanisms that could be used to enable government to expropriate land with or without compensation. The inputs of the public were summarized using the arguments for and against changing s25 of the Constitution:

For Expropriation Without Compensation

The public's inputs demonstrated an overwhelming support for constitutional amendment and expropriation of land without compensation. However, there were varying points of departure. It was argued that s25 was an impediment to expropriation of land without compensation and therefore necessitated an amendment. Section 25(1), 25(2)(b) and 25(3) were identified as part of the problem because they protected "illegitimate" property rights acquired under the colonial and apartheid regimes. Moreover, the 1913 cut-off period for restoration of land rights in Section 25(7) was deemed to be arbitrary and necessitated the amendment.

Some respondents were of the view that the State should take responsibility for the issuing of title deeds to beneficiaries of redistribution programmes of government. It was also argued that, once the expropriation of land without compensation was achieved, all land must be transferred to the State and the State must allocate use rights to all citizens equitably. The role of traditional leaders on communal land was a contested terrain, some people believed that traditional leaders should own the land and others believed traditional leaders never owned the land and that the land belonged to the people.

To sum up, three broad views had emerged from the proponents of constitutional amendment and expropriation of land without compensation; namely, once expropriation of land without compensation was achieved, (i) the government should issue title deeds to the beneficiaries of the redistributive programme, or (ii) State custodianship (nationalisation) of all land, (iii) explore of mechanism of administration of communal land under traditional leadership.

In contrast, among those in favour of expropriation of land without compensation, one found a different line of argument that suggested that the Constitution in its current form was transformational in nature and allowed for expropriation of land with zero compensation under certain circumstances or below the market-value. In fact, they argued, s25 was written in such a manner that it did not guarantee the property rights in absolute terms. This line of argument referred to s25(2)(a) which states that property may be expropriated only in terms of law of general application for public purpose or in the public interest (defined to include the nation's commitment to land reform).

They further argued that the Constitution did not prescribe willing buyer willing seller approach. The guidance from the Constitution, in s25(3), was that compensation must be just and equitable. The section further attempted to define circumstances to be considered in determining a just and equitable compensation. In addition, those who held this line of argument referred to s 25(8) which states that “No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination”, provided that any departure from the provisions of this section is in accordance with the provisions of Section 36(1).

Section 36(1) is about limitation of rights. The Bill of Rights was also limited only in terms of law of general application. Therefore, an argument submitted under this line of thought was that there was no need to amend section 25 of the Constitution. What was needed was an amendment of the Expropriation Act, No. 63 of 1975 without delay so that it was in line with section 25 of the Constitution and clarified terms and conditions under which land could be expropriated without compensation in the public interest. Any further contestation could be brought before the Judiciary for clarification.

The different viewpoints discussed above, however, shared some common views about the importance of expropriation without compensation, or with a just and equitable compensation which may amount to zero or any amount that was below the market-value. These could be summarised as follows:

- A need to address the historical inequitable land ownership that resulted from the colonial and apartheid racial land laws, policies and practices. The legacy of the dispossession continues to date, 24 years after attainment of democracy.
- Emphatic rejection of the need to pay compensation was based on notions of illegitimate property rights through theft and murder of everyone that resisted conquest and occupation of his//her land.
- The current regime had failed to redistribute land at scale and pace expected. Less than 10% of White-owned agricultural land had been transferred, land reform programme under the current constitution had failed to deliver land to the landless.
- Expropriation of land without compensation was not an anti-White campaign, and was not meant to drive White farmers away. However, it was about transformation of South Africa to remedy the skewed patterns of land ownership emanating from the colonial and apartheid regimes.
- Skewed patterns of land ownership that continued to affect the lived reality of the landless majority, who lived under the most undignified of circumstances in the informal settlements and overcrowded areas in the former reserves. The ‘willing buyer, willing seller’ principle continued to frustrate all efforts to redistribute land.
- It was important to guard against corruption and nepotism when land is allocated.

Against Expropriation Without Compensation

As a starting point, those opposed to constitutional amendment argued that the rejection of expropriation without compensation did not mean that the proponents of this viewpoint did not support land reform. Speakers who expressed this viewpoint indicated that land dispossession that occurred under apartheid government was evil and a need for a redress was of utmost

importance. However, a constitutional amendment to ensure that expropriation was not subject to compensation was rejected. Those viewpoints hinged on the following:

- The entrenched protection of private property rights in the Bill of Rights. Any suggested amendment to expropriate land without compensation would threaten the existing constitutional architecture.
- The use of expropriation without compensation for political purposes hides government's inefficiencies in the implementation of land reform. The slow pace of land redistribution over the two decades was not a constitutional problem and was no reason why Parliament should amend it. The real challenge had been the waste of resources through maladministration and corruption, funds that could have been put to good use to accelerate land reform.
- The Constitution makes reference to legal and policy measures that could be used to address land redistribution.
- Parliament needs to accelerate processing of the Expropriation Bill which should subsequently be signed into law by the President.
- Expropriation without compensation would have devastating effects on the economy of South Africa. Venezuela and Zimbabwe were often referred to as examples of failed land expropriation policies. The ripple effect of such policy decision would be felt not only in the agricultural sector but also in banking sector, property, and export and trade industries. These effects would negatively affect the ability of the economy to create jobs which South Africans desperately need.

3.2 Written Submissions

This section of the report presents the information, and analysis thereof, received during the public call for written submissions. Various themes emerged from the analysis of the information. Most respondents limited themselves to a yes or no to the amendment of s25 of the Constitution. The analysis also presented the committee with the number (and percentages) of

those who were in support or against the amendment to s25 of the Constitution, and those who were undecided about their views on the possible change to s25 of the constitution.

Statistical Information

A total of 630 609 submissions were received from the public call for written submissions. However, only 449 522 were valid, and analysis could be performed based on the contents of the submissions. The inquiries, unrelated, blank and duplicate submissions were excluded from the analysis and that brought the numbers down from 630 609 to 449 522 valid submissions, thus a variance of 181 087 submissions. Table 2 provides a summary of findings regarding the views of the members of the public.

Table 1 Summary of Submissions

Total Submissions	Yes, change the Constitution	No, don't change the Constitution	Undecided
449 522	153 849 (34%)	291 257 (65%)	4 416 (1%)

The table indicates that 65% of valid submissions were opposed to changing the constitution whilst 34% were in favour of amendment of the constitution. A further 1% was undecided on the matter.

Arguments for amendment of s25

Upon further analysis of the 449 522 submissions, 153 849 members of the public responded in favour of the change of the Constitution to expropriate land without compensation. There is a perception amongst those who responded 'yes' to changing the constitution that many people are without housing as the land prices are high and in private ownership, thus inhibiting them from having access to land for housing and to produce and/or grow food.

Many respondents who were in support of amending s25 also believed that land was taken from Blacks unfairly through apartheid government's manipulation of laws to create an unfair society which disadvantaged the Black people. They emphasized the need for a process that would redress and rectify the injustices of the past.

There were significant recommendations which members of the public attached to their 'yes' responses. They mentioned that agricultural land that was actively used for food production and contributed to job creation and the economy should be preserved and not expropriated. Government should allocate unused land for farming and invest in agricultural training institutions for skills development in order to empower 'new' farmers to promote success.

These members of the public also believed that the Constitution should be amended but expropriation should be without compensation. It was questioned whether land owned by the government will be expropriated without compensation too? The general consensus amongst the 'yes' submissions was that the current Constitution is not allowing any progress regarding the land restitution and redistribution in order to minimize the gap between the rich and the poor.

Arguments Against Amending s25

The numbers clearly indicate that majority of members of the public who made written submissions were against the amendment of the Constitution to allow for expropriation of land without compensation. Those who argued against the amendment of the Constitution were of the opinion that land cannot be taken away from owners without compensation as that constituted theft. The possible change of the constitution was labelled as unconstitutional, violation of human rights, international laws and amounted to 'reverse-apartheid'. Many respondents believed that the current s25 of the Constitution should be not be amended. Amending the section would be undoing all the positive changes implemented in the interest of the South African people and would be done so to suit political agendas.

Respondents stated that they did not want land expropriated without compensation as they had worked hard for what they have through blood, sweat and tears and questioned who would settle the bonds they have on their land if it is expropriated. It was argued that an amendment to allow for expropriation without compensation would result in a collapse of the economy, banking sector, loss of foreign investment and jobs.

3.3 Oral Submissions

With regards to oral submissions to the committee, the following key issues emerged from the presentations:

3.3.1 About the Constitution

Some presenters expressed the view that the Constitution is not an impediment to land reform. It allows for land reform and provides for various ways in which land reform can be done by government.

Section 25(2) permits expropriation of property provided that it was authorised in legislation. It was argued that there was a need for a law of general application through which government could expropriate land with or without compensation. People were of the view that this requires a review of pieces of legislation that would be used as a base and/or legal basis for expropriation of land.

The presenters noted that the failure of land reform programmes was not the failure of the Constitution but a failure of both legislation and its pragmatic application by the Executive. New legislation or legislative amendments can be introduced and brought to Parliament for consideration and eventual implementation by the Executive. The caution was that the legislative pieces introduced and passed by Parliament must be in line with the provisions of the Constitution.

Section 25(3) which deals with the just and equitable compensation, provides for the determination of compensation and the time and manner of compensation. Thus, there is flexibility and options on how this could be done.

Section 25(4) defines public interest to include land reform, any forms of reform to bring about equitable access to all natural resources of this country. No person should be arbitrarily denied access to land and other natural resources of the country.

Presenters proposed a need to balance the protectionist s25(1) – (3) and the transformative clauses of the Constitution. This balance is critical in determining requirements and decision making for expropriation of land whether it is means of compensation or not.

Some presenters argued for the development of an interpretation framework for the whole of s25 of the Constitution to guide government in implementation. This was over and above the use of legislation to guide expropriation of land with or without compensation.

3.3.2 Arguments for Expropriation of Land Without Compensation

The expropriation without compensation was supported in cases where:

- Land is abandoned.
- Neglected land is owned by absent landlords.
- Privately owned land that is not productive.
- Land belonging to the municipality and that is not in use.
- Idle land required for productive public use.
- Land whose value has been unfairly inflated due to massive State investment.
- Land whose owner benefited from unfair discriminatory loan during the apartheid era.
- Land offered by the owner to the State as a donation.
- Land held for speculative reasons but is needed for productive use.
- State land and land occupied by labour tenants historically.

An argument for altering of the current land tenure regime to address the slow pace of land reform and high costs of land redistribution was put forth by some presenters. Of main concern were people living on the farms, labour tenants, women and children who are often affected in a negative way especially when farms are sold or the main breadwinner became incapacitated to work.

The presenters implored Parliament to understand that 1) land reform process should consider land restoration for equal access by all farmers; 2) recognize that agricultural policies pursued by colonial and apartheid governments were biased towards White farmers and producers; 3) land dispossession enabled White ownership of most of the country's land; and 4) s25 disregards the influence of colonialism in the current patterns of land ownership.

An argument was presented that the South Africans were not presented with an opportunity to test the application of s25 (8). Section 25(8) states that no provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of s36(1). Section 36 is about the limitations of the rights, and s36(1) states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors, including:

- a) The nature of the right;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;
- d) The relation between the limitation and its purpose; and
- e) Less restrictive means to achieve the purpose.

There was a sense from others that expropriation without compensation is illegal and therefore the s25 of the Constitution must be reviewed in order for expropriation of land without compensation is done legally. However, the legalization of this act must be based on the law of general application.

A view was expressed that the s25 in its entirety must be scrapped because White owned land was stolen from the Black people of this country.

The committee heard that South Africa needs to build on the Brazilian model which created a concept of a “social function” for rural land. Government must then ensure that land fulfils its social function and the failure to do so would be a reason to expropriate land without compensation.

Some presenters noted that government’s decreasing budget for land reform coupled with the failure of the “Willing Buyer, Willing Seller” policy/model meant that expropriation without compensation is regarded as just and equitable under the appropriate circumstances.

Section 25(6) provides for traditional communities to restitution of property. Section 25 (6) states that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. Therefore, the 13% of communal land under the custodianship of traditional leaders must not be expropriated.

The committee heard that following expropriation, vulnerable groups such as women, farm dwellers, labour tenants, etc must be prioritized when land is redistributed.

3.3.3 Arguments Against Expropriation of Land without Compensation

Section 25 makes provision for land expropriation in the public interest. Thus government must take steps to ensure that there is expropriation of land in the public interest. In expropriating land in the public interest, fair compensation for expropriated land must be provided. Fair compensation could be very little or nothing depending on the formula that the department or government formulates for calculating compensation for land expropriation.

Others view this whole process on the possible review of s25 to enable State to expropriate land without compensation in the public interest as a political ploy shortly before the 2019 elections. Politicians are using this process as a mechanism to gain more votes in 2019.

Others argue that land was acquired through the occupation of vacant land, negotiations or as a result of a conquest.

The amendment of s25 is detrimental to rights enshrined in sections 3; 7; 9; 22 & 24 of the Constitution. These clauses relate to citizenship, rights, equality, freedom of trade, occupation and residence; and environment.

The amendment has the potential to undermine property rights. They further argued that properties are security for loans and banks invested over R1.6 trillion of South Africa's savings, salaries and investments in property loans. A decrease in property values could lead to the economic shocks both

the economy and the banking sector cannot afford. Most importantly, individual property owners will be affected negatively. In the event of a crisis, that would mean that government must step in to protect the depositors' funds.

Expropriation of productive farms may affect food security in the country. Government should take care not to expropriate productive farms and/or land.

3.3.4 Impediments to Land Reform

The following were identified as impediments to land reform by most presenters:

- Policy uncertainty;
- Failure to implement current provisions of the Constitution and land reform laws;
- Land audit, it is currently biased and not transparent;
- Paying for stolen land;
- Lack of political will;
- Corruption in the land reform process; and
- Failure of the oversight function of Parliament.

3.3.5 What Needs to be Done?

The presenters made proposals on how government could expedite land reform in the country. The presenters proposed the following:

Theory Underpinning Land Reform

- Spatial planning instruments must be used to earmark suitably located urban and peri-urban land for settlement purposes.
- Consider the findings and implement the recommendations pertaining to land reform in the High Level Panel (HLP) report.
- Consider the economic consequences of land expropriation.
- Review the structure of property rights in its entirety.
- Compensation should not remain an essential prerequisite for redress but rather public purpose as paramount to land expropriation.

- Need for a formula to calculate compensation. The formula will be used to determine when compensation should or should not be paid and how much would be regarded as fair compensation.

Development and Support of New and Small Scale Black Farmers

- Overhaul of State's technical, financial and physical architecture of support to farmers.
- Consider a blended finance model for land reform where the private sector match the funds committed by the State to establish new Black commercial farmers.
- The establishment of the National Land & Agrarian Trust to serve as a depository of all farms owned by the State.

Legislative Framework

- Expedite the passing of the Expropriation Bill in order to test what constitutes “fair and just” compensation in different circumstances.
- Draft and pass a Redistribution Bill to strengthen citizens by ensuring that State uses its power in the interest of all.
- Draft and pass a Protection of Informal Rights Bill to provide for basic protection of land rights of the poor. In addition, the Mineral & Petroleum Resource Development Act, and the Traditional Governance and Leadership Framework to be subjected to the provisions of the Protection of Informal Rights Bill.
- Develop a new Land Reform Framework Bill to address the role of local stakeholders and sub-divisions related to:
 - Sub-division of Agricultural Land Act 70 of 1970.
 - Provision of Land and Assistance Act 126 of 1993 as amended
- Draft and enact overarching tenure law that gives effect to the principle that South Africa belongs to all who live in it.
- Introduce a new law on land nationalization leading to all registered freehold rights being converted to long-term leaseholds.

Custodianship of Land

- State to have custodianship of land and administer land equitably on behalf of all citizens.

Economic and Other Considerations

- Establish a National Land Reform Fund with all citizens contributing to it.
- Establish the Office of the Adjudicator to look into matters related to expropriation.
- Creation of an Ombudsman for Land Reform.
- Establishment of government, business and civil society partnership to explore sustainable, evidence based land reform models.

Alternative Dispute Resolution Mechanism

- An alternative dispute resolution mechanism must be established to deal with any disputes that may arise out of land expropriation processes. This body must be independent of the Department of Rural Development and Land Reform.

4. SUMMARY OF THE PRESENTER'S VIEWS

The following can be summarised from the views of the public with regards to the possible review of s25 of the Constitution to allow the State to expropriate land in the public interest without compensation.

4.1 Possible Review of Section 25 of the Constitution

Two arguments emerged with regards to the possible review of s25 of the Constitution. One argument advocated for the retention of section 25 in its current form. These respondents argued that s25 allows for expropriation of land without compensation but the government had failed to expropriate land due to poor implementation of relevant legislation and policies. Furthermore, compensation for expropriated land can start at zero compensation. Therefore, a formula must be developed in order to ensure

that compensation starts at zero and could increase depending on the circumstances of expropriated land. The government should implement the current sections and questions on its interpretation could be resolved in a court of law. Section 25 in its entirety requires implementation and therefore the interpretations of its various clauses. These interpretations can be tested in a court of law.

Another argument was that whilst s25 implies that land can be expropriated without compensation, it should be amended to make it explicit that land can be expropriated without compensation.

4.2 Land Reform

Some members of the public emphasised the need for a land reform programme that will address and deal with the land dispossession of the indigenous people of the country. Land dispossession indigenous resulted in skewed land ownership patterns and these should be corrected. Also, land reform should address the structural challenge with regards to land ownership.

There is a need for land reform in order to promote reconciliation and unity among South Africans. Government was implored to take this opportunity to reconcile and unite South Africans irrespective of race.

Members of the public indicated that land reform must be done in order to address colonial and apartheid spatial arrangements in cities. They noted that Blacks in particular live in the periphery of the cities using a lot of their money paying for transport costs to get to their workplaces which are closer to the cities. Also, the spatial arrangement in cities still perpetuate fragmentation between Black and Whites.

Some presenters argued for the imposition of ceilings on land ownership and redistribution models similar to those of Tanzania and Cuba. In these two countries, farms were resized and redistributed for food production by co-operatives, communities and smaller farms. All property owners should be compelled to register their land ownership for a fast land audit at local government level. It was argued that land and property ownership should be limited to only two properties per owner and that there should be a

restriction on the size of primary living residence and secondary recreational living residence. This will lead to a situation wherein more residential properties are released into the market.

Respondents also called for the prohibition of ownership and sale of land to foreigners. In the case of investors, it was clarified that there should be negotiations based on land sale terms, which are in the best interests of the indigenous majority of the people. For continuation and functionality sake, they also called for land to be redistributed realistically, and the State should not to have all the land under its custodianship.

Further, that there is a need to make a distinction between, the land and the upper structure, between land and development.

4.3 Expropriate Without Compensation

Some members of the public recognized the need to expropriate land without compensation in the public interest as stated in s25 (2) of the Constitution. They indicated that there was no precedence set and therefore this clause must be tested in the court of law.

The respondents also felt that it will be an opportunity to test s25 (3) of the Constitution. Section 25 (3) relates to compensation that is just and equitable, reflects an equitable balance between the public interest and the interests of those affected. In doing so, the State must have regard to all relevant circumstances, including:

- The current use of property.
- The history of acquisition and use of the property.
- The market value of the property.
- The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property.
- Lastly, the purpose of the expropriation.

All the above must be tested in court when the state expropriates land without compensation in the public interest. The assertion pre-empts a situation where the State is taken to court by those whose land is expropriated by the State.

4.4 Legislative Reform and International Law

The respondents called for legislative reforms to address a range of issues including protecting the rights of landless people, address repressive apartheid spatial arrangements especially in cities, and address skewed land ownership patterns. These include:

- Expropriation Bill in order to test what constitutes “fair and just” compensation in different circumstances.
- Redistribution Bill to strengthen citizens by ensuring that State uses its power in the interest of all.
- Draft and pass a Protection of Informal Rights Bill to provide for basic protection of land rights of the poor. In addition, the Mineral & Petroleum Resource Development Act, and the Traditional Governance and Leadership Framework to be subjected to the provisions of the Protection of Informal Rights Bill.
- Draft and enact overarching tenure law that gives effect to the principle that South Africa belongs to all who live in it.
- Introduce a new law on land nationalization leading to all registered freehold rights being converted to long-term leaseholds.

In deciding on the possible review of s25 of the Constitution, the respondents argued for consideration of international law as it relates to expropriation with compensation. South Africa should therefore relook at conventions and/or treaties that she has rectified over the years.

4.5 Land Restitution

There was considerable unhappiness expressed on the matter of the 1913 cut-off date for land restitution. That the provision was seen as a distortion, unjustifiable, and creating exclusion to specific cultures.

4.6 Current Constitutional Provision on s25

That Section 25 in its current form presents no problem and that the real challenge is the lack of government capacity to implement Constitutional provisions, corruption and the lack of budget to expedite land restitution and reform.

4.7 Law of General Application

There was a general consensus that a law of general application as provided for in s25 of the Constitution must be addressed through the introduction of legislation in Parliament to allow for Expropriation and expropriation without compensation.

4.8 High Level Panel

Throughout the process of the different hearings and submissions, there was constant reference to the recommendations of the High Level Panel which looked into Legislation passed since 1994 and whether it required review. It was acknowledged that the recommendations are currently before Committees of Parliament and being processed.

4.9 Lack of Security of Tenure

There was widespread dissatisfaction and calls to address the lack of security of tenure both in written and verbal submissions. In particular, farm workers and farm dwellers raised the human rights concern that their dignity and their cultural rights were being infringed by the current status quo and demanded action.

4.10 Farmers

There were mixed views on food security, held between emerging farmers who saw expropriation of the land without compensation was not the problem to food security, whilst established commercial farmers, with exceptions, opposed expropriation of the land without compensation. Established farmers argued that expropriation of land without compensation would have negative impact on food security, agricultural development and the economy.

4.11 Financial Institutions

It was recorded that financial institutions saw expropriation of the land without compensation as having a serious and negative impact upon the “debt book” and had a negative impact upon investor confidence.

International examples were also raised in this regard and the sovereign credit rating.

4.12 Lack of Title Deeds

There was also dissatisfaction with a lack of issuing of title deeds by government to land claim beneficiaries and for RDP houses beneficiaries.

5. OBSERVATIONS ON THE POSSIBLE REVIEW OF SECTION 25 OF THE CONSTITUTION

5.1 *Observations in Relation to Public Participation*

- 5.1.1 There were differing views on whether the current s25 of the Constitution was an impediment to Land Reform in as far as Expropriation of Land without compensation is concerned. The clarity should either be sought through test cases and an application to the Constitutional Court directly.
- 5.1.2 There were differing views regarding ownership/custodianship of land and issuing of title deeds to beneficiaries. There was argument for State to have sole custodianship of all land while the other argument was for the issuing of title deeds to beneficiaries of land redistribution programme. A mixed approach to ownership of land was proposed thus recognizing the importance of individual land ownership rights. Furthermore, a narrative that South Africans did not necessarily want agricultural land, but that some wanted urban land was put to the fore. There is an urgent need for the Land Reform Program to be expedited to redress the historical injustices of the past that caused skewed land ownership patterns in favour of White South Africans. The Constitution and relevant laws should support the expedition of land reform processes in the country.

- 5.1.3 The law of general application as envisaged in s25 of the Constitution together with other Land Reform legislation which must be finalised by the Executive and processed through Parliament. Inputs from South Africans reflected that land reform is needed at an accelerated pace. The current nature of the land reform programme has done very little to redress inequalities in land ownership.
- 5.1.4 The majority of those who participated in the public hearings across the country expressed the sentiment that s25 needed to be amended to allow for expropriation without compensation. However, there was no consensus on how this should take place, nor what the nature of the amendment should be.
- 5.1.5 Many of those who participated in the nationwide public hearings were adamant that the Constitution in its current form does not appreciate the deleterious effects of dispossession, and that it draws a moral equivalence between the interests of the dispossessed and the interests of the dispossessor.
- 5.1.6 It was also argued that although Section 25 (2) allows for expropriation of property, Section 25 (2) (b) is explicit that this must be subject to compensation, which must be agreed upon by those involved, or decided by a court of law. Most of those who participated in the hearings argued that the provisions of Section 25 (2) (b) will practically hand over the land reform programme to the courts, and provides for a litigations based land reform, likely to benefit those who currently own property.
- 5.1.7 The majority of oral submissions were strongly opposed to changing the Constitution, pointing out that the Government has failed to implement the current provisions of the Constitution, with many warning against the unintended consequences of the proposed amendment.

- 5.1.8 Written submissions received by the Committee, notwithstanding the current issues of the report and presentation thereof, are also strongly opposed to changing the Constitution.
- 5.1.9 The need for land across the country is real amongst the dispossessed Africans. There was also a strong view that private ownership of land cements inequality as it allows those who have power and resources to accumulate as much land as possible in few hands.
- 5.1.10 There was a strong sentiment that the negative wording of Section 25 (1) precludes the imperative of restorative justice, which must be at the centre of land reform, and protects private property rights to the detriment of the commitment to land reform.
- 5.1.11 During the public hearings, some traditional leaders were of the view that the Constitution should be amended but believed that land must not be under government custodianship but retained by them. Traditional leadership also requested that the 13% of the land which is currently in their hands be not expropriated.
- 5.1.12 Any decision regarding the question on a possible review of s25 of the Constitution must consider the impact on food security, stability in the agricultural sector and economy, investor confidence, financial exposure to banks and other financial institutions by commercial farmers, as well as result inadequate support for emerging farmers.
- 5.1.13 Members of the community raised important questions regarding the status of land under "Community Trusts" during the process of expropriation. They advised that this kind of land remaining their hands and be administered by their community committees.
- 5.1.14 Traditional healers expressed their frustration on getting their herbs for traditional medicine because of the entry restrictions in some areas.

5.2 Observations in Relation to Process

- 5.2.1 Members were afforded an opportunity, and did undertake in their individual capacity, to peruse the written submissions at Parliament to consider the contents of the submissions. It was apparent, that in many instances, written submissions were computer generated duplications with exactly the same content, and the only changes being to the name of the respondent and the contact details.
- 5.2.2 Some Members observed some incidences a degree of intimidation that occurred during the public hearings. Some members also expressed that there were or according to some Members Racial attacks and threats against speakers at these hearings were uncalled for and may cast doubt over the integrity of the process. A counter argument was that the land issue was and is still an emotive issue and the co-chairpersons did their best to deal with the matter.

6. COMMITTEE DELIBERATIONS ON THE PROPOSED RECOMMENDATIONS BY MEMBERS

The committee deliberated on the proposed recommendations by Members.

6.1 Points of Convergence

- 6.1.1 There was total agreement that there was a need for urgent and accelerated Land Reform in order to address the injustices of the past that was inflicted on the majority of South Africans.
- 6.1.2 Hunger for land amongst the dispossessed was palpable and that the disposed were of the view that very little was being done to redress the skewed land ownership patterns.
- 6.1.3 Relevant legislation must be enacted to give effect to land reform as envisaged in s25 of the Constitution which must include that the State should formulate a clear strategy for land redistribution.

- 6.1.4 The security of tenure for farm workers, farm tenants and those residing on communal land held in a Trust must be assured.
- 6.1.5 Constraints include increasing evidence of corruption by officials, the lack of sufficient budget of the land reform, and the lack of capacity within the state have proved to be a stumbling blocks to land reform.
- 6.1.6 South African were afforded fair opportunity to make representation to parliament in a language of their choice.

6.2 Points of Divergence

- 6.2.1 The constitution should be explicitly clear that expropriation without compensation is one of the mechanisms legally permissible to effect the land reform program.
- 6.2.2 Section 25 of the constitution in its current form is not an impediment to land reform.
- 6.2.3 The Constitutional Court must be approached in order to provide clarity on the full parameters of s25 of the constitutionality and whether this section is an impediment to expropriation without compensation.
- 6.2.4 With regard to the custodianship of land, two views were recommended, that is, one in favour of the state retaining custody of the land and the other which advocates for a mixed ownership of land and the issuing of title deed to beneficiaries.
- 6.2.5 The amendment of s25 will threaten food security, agricultural reform and will discourage investment.
- 6.2.6 A separate and independent Land Ombudsman must be established to manage and intervene when person's rights are violated by the State.

- 6.2.7 That Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of s25 of the Constitution. This should be done before the end of the 5th Democratic Parliamentary Term.
- 6.2.8 Expropriation without compensation does not address the real constraints in land reform.
- 6.2.9 The recommendations from the High Level Panel should be engaged and its recommendations considered.
- 6.2.10 The government must conduct a proper land audit to provide clarity on land reform.
- 6.2.11 The committee did not adequately consider the written submissions.
- 6.2.12 The provisions of section 59 of the constitution have been flouted.
- 6.2.13 The principle of “willing buyer willing seller” must be applied in the land reform process.
- 6.2.14 The Constitution in its current form is not an impediment to the land reform process.
- 6.2.15 Some political parties used the land hearings to spread misleading information about the real constraints facing the land reform process and this treated a very serious matter and process as a tool for electioneering.

7. FINAL RECOMMENDATIONS

Having taken all these into account, the Joint constitutional review Committee recommends:

- a. That Section 25 of the Constitution must be amended to make explicit that which is implicit in the Constitution, with regards to Expropriation of Land without Compensation, as a legitimate option for Land Reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs.

- b. That Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of Section 25 of the Constitution.
- c. Parliament must table, process and pass a Constitutional Amendment Bill before the end of the 5th Democratic Parliament in order to allow for expropriation without compensation.

The committee is overwhelmingly satisfied with the processes followed by it. The committee attracted many South Africans to participate in this process.

Report to be considered.