

MAKING YOUR FUTURE WORK BETTER – Learning from Madiba

Insession



Special Edition · July 2018



Joint Constitutional Review Committee on expropriation of land without compensation

Editor in Chief
Shirley Montsho

Editor
Mr Brent Simons

Production editor
Mr Mava Lukani

Design and layout
Lazola Zantsi

Copy editors
Jane Henshall, Vusumzi Nobadula

Writers
Sakhile Mokoena, Abel Mputing, Mava Lukani,
Malatswa Molepo, Sibongile Maputi

Photography
Mlandeli Puzi, Zwelethemba Kostile

Distribution & subscriptions
Jacqueline Zils

Publisher
Parliament of the Republic of South Africa

Printer
Mailtronic Direct Marketing cc

Copyright
INSESSION is a monthly publication, which is published by the Information and Content Development Unit of the Parliamentary Communication Services of the Parliament of the Republic of South Africa. All material published is copyrighted and cannot be reproduced without the written permission of the publisher.

EDITORIAL ENQUIRIES
Telephone 021 403 8738
Fax 021 403 8096
E-mail insession@parliament.gov.za
Subscriptions jzils@parliament.gov.za
Post PO Box 15, Cape Town, 8000

OUR IDEALS
Vision
An activist and responsive people's Parliament that improves the quality of life of South Africans and ensures enduring equality in our society.

Strategic Objectives
Strengthening oversight and accountability; enhancing public involvement; deepening engagement in international fora; strengthening cooperative government; strengthening legislative capacity.

VISIT US ON
 www.parliament.gov.za
 www.facebook.com/parliamentofrsa
 twitter.com/ParliamentofRSA
 youtube.com/ParliamentofRSA
 [ParliamentofRSA](https://www.instagram.com/ParliamentofRSA)

BOOK A TOUR
To tour Parliament
Telephone 021 403 2266
Fax 021 403 3817
E-mail tours@parliament.gov.za

ISSN 2227-1325 (Print)
ISSN 2227-3778 (Online)



Contents

- 4 We need a new approach to deal with the land question
- 5 First public hearings commence in Springbok in Northern Cape
- 6-7 Listening to the people of Northern Cape
- 8 Mixed views in Mokopane, Limpopo on changes to section 25 of Constitution
- 9 Public hearings concluded in Tzaneen in Limpopo
- 10 Botshabelo Hall in Mangaung in Free State packed in spite of cold weather
- 11 Daytime Constitutional Hearings not untoward

Before the Joint Constitutional Review Committee embarked on nation-wide public hearings, it hosted a colloquium at Parliament at the beginning of June. The colloquium consisted of legal experts, academics, business organisations and entities that have a shared interest in land-related matters whose representatives shared their expertise on the matter.

The National Assembly's decision on the expropriation of land without compensation raised uncertainties, concerns and questions about the feasibility of this policy, which is yet to become law. The purpose of the colloquium included the determination of the applicability and legality of the policy and to enlighten members of the committee.

Opening the colloquium, the Co-Chairperson of the committee Mr Vincent Smith, as a way of background, said on 27 February 2018 the National Assembly (NA) instructed the Joint Constitutional Review Committee to embark on a process of reviewing section 25 of the Constitution in order to make it possible for the state to expropriate land without compensation in the interest of the public, and to



*Listening to the people
Aboo-A-Taob Hall, Mokopane, Limpopo*

consult widely in that exercise. Mr Smith said the committee is expected to report back to the NA on 28 September 2018 on the mandate. He said there is a universal acceptance that there is a need for the acceleration of the land reform programme in South Africa, which will also provide restitution for the majority of South Africans who lost their dignity during the ruthless colonialism and apartheid eras.

The NA's adoption of the motion for land expropriation without compensation immediately after the 2018 State of the Nation Address was a remarkable, ground-breaking and historical progressive move in dealing with the huge legacy of colonialism and apartheid. Mr Smith said the committee is aware that the move has created an excitement – and heightened expectation in some circles, but anxiety and panic in others.

He said the colloquium was aimed at informing the committee on the issues involved in carrying out its mandate. He said calls to amend the Constitution for the purpose of expropriation without compensation created a dichotomous reality. On the one hand, Mr Smith explained, there is a school of thought that the Constitution in its current form is not an impediment to land reform, and does not need to be amended. On the other hand, another school of thought holds that it does impede land reform and must be amended.

Mr Smith explained: "The committee is just arming itself with information before it goes out for public hearings to listen to the public. Those in favour of the amendment of Section 25 of the Constitution must convince us why – and those opposed to an amendment must also bring forward the argument against it."

Among the guests at the colloquium was struggle veteran, constitutional architect and former South African Constitutional Court Judge, Mr Albie Sachs, who was invited to speak on the implications of the review of section 25 of the Constitution. The former judge emphasised that the Constitutional Court has not pronounced on land expropriation without compensation. Furthermore, he told the committee that he was neutral on the issue, but participated on the grounds that he was invited to speak on section 25 of the Constitution.

The former judge said section 25 of the Constitution was not drafted at the 1992 Convention for a Democratic South Africa (Codesa) nor by the Constituent Assembly, which drafted the Constitution. He said section 25, which promotes and facilitates the redistribution of land, was drafted by Parliament.

He emphasised the primacy of the principle of the judicial review tradition in a constitutional democracy to avoid

the situation of abuse of power. The former judge emphasised that the conclusion of the process of the review of section 25 of the Constitution must avoid producing legislation that allows someone in a powerful position to see a beautiful farm and decides to take it, as has happened in other parts of Africa.

He said the preamble to the Constitution and section 25 of the Constitution creates a sound basis for the expropriation of land without compensation. "There must be meaningful engagement with the public to get the buy-in of the people," Mr Sachs emphasised. He said a new expropriation Act that is contextualised is urgently needed.

"I am not taking a position, but I'm just suggesting a creative way that will get a bigger buy-in." He said reviewing of section 25 of the Constitution must be done in a manner that brings the nation closer rather than dividing it. The Co-Chairperson of the committee, Mr Lewis Nzimande, said expropriation without compensation will go ahead. The question is the modalities. "We realise that a lot of work still lies ahead and therefore this is just the start. We will be going to the communities to listen to them. The consensus is that the access to land is not there and there is a need for land. The Constitution needs to give expression to this."

Creating an opportunity for people to participate



We need a new approach to deal with the land question

The academic session of the colloquium began with Prof Ruth Hall from the Institute for Poverty, Land and Agrarian Studies, saying that concerns over land are historical and have even found expression in the Freedom Charter, but the charter never explained which land should be shared, by whom and how.

The new process should first take stock of the challenges and achievements, if any, of a raft of laws that were passed to bring about land reform. She cited the state's incompetence as a major factor that failed well-intended land reform laws.

Referring specifically to the land claims backlogs, Prof Hall said to date, the state is sitting with many claims that are either not gazetted, or settled, or

finalised, because of weak institutional capacity. She said instead of a full bench of judges, land claims are administered by a single judge.

"We need a new approach to this. If not, it will take decades to resolve the current and second round of claims before the Land Claim Commission, she said. "At the current pace, it would take up to 35 years to resolve old land claims. And 143 years to process the new ones. This shows that there is no political will by the executive to resolve this matter," Prof Hall emphasised.

In light of alleged land corruption and inherent deficiencies in the state machinery, she asked: "Can we trust the state with this new process when it has so many deficiencies and its officials are faced with mounting allegations of land corruption?"

With regard to the expropriation of land without compensation, she said the expropriation of land without compensation should have a stipulated

spectrum rather than a blanket approach. "Indicate a spectrum of circumstances to operationalise the criteria in S25(3) and stipulate zero compensation, partial compensation, market-related compensation or above market price. This could provide a means of advancing expropriation of land without compensation in certain circumstances, providing policy and legal certainty, subject to judicial review."

Mr Nzimande said through the colloquium the committee gained valuable perspectives on various stakeholders that will inform the work of the committee going forward. The forthcoming public hearings to solicit the views of South Africans on this matter, which the committee will commence shortly, will be crucial before a final decision will be made about the modalities to be followed in executing the expropriation of land without compensation.



First public hearings commence in Springbok in Northern Cape

The expropriation of land without compensation matter attracted hundreds of members of the public in the Northern Cape's Springbok area where the first public hearings took place. The Chairperson of the delegation and Co-Chairperson of the committee, Mr Lewis Nzimande, said he was pleased with the progress of day one of the hearings and the turnout by the public.

"We have heard the fears and concerns of those members of the public that are against the amendment of section 25 as they feel there is existing legislation to deal with land reform. We also heard those fierce supporters of the amendment of the Constitution to make expropriation of land without compensation possible, especially to those who have suffered economically because of our historic past.

"The committee will take all oral submissions made into account when it deliberates on this matter. We want to thank all South Africans who came out to make their submissions. It shows they want to be part of the positive development of our country and people."

Members of the Constitutional Review Committee:

1. Ms Madipoane Mothapo
2. Vincent Smith, Co-Chairperson of the CRC
3. Ms Tsapame Mampuru
4. Mr Sibonakaliso Mhlongo





Listening to the people

Springbok

Yes or No to a change of the Constitution to allow expropriation of land without compensation? This is the question to be answered by hundreds of South Africans who attended the first day of public hearings.

Old and young people stood in line for hours outside the venue before the scheduled time of the public hearings, to be sure that their views are heard on the matter. Mr Nzimande made it clear that the committee would only focus on the mandate given to it by the National Assembly and the National Council of Provinces. That is, to address the question: is amending section 25 of the Constitution necessary to implement expropriation without compensation? The committee was told by members of the public that 94% of the land is owned by white people in the Northern Cape. People expressed their support for expropriation of land without compensation.

There were, however, people who were mostly against the amending of section 25 of the Constitution. The committee heard from several speakers that large

parts of the Northern Cape are classified as communal land, which was taken during colonialism and apartheid from communities who had lived there for centuries before that. They still do not own this land; it is in the state's hands. Most presenters felt that amending the Constitution to allow expropriation without compensation would not help them get their land back. What is more, they felt that amending this section would make it easier to alienate them further from their land.

Mr Daniel Dawid Cloete from the small town of Steinkopf, said the pre- and post-1994 government held his community's land in trust. After 1994 they were told to establish an entity to manage it themselves. However, they have struggled to get this entity going and have not received any support from the government to do so.

Mr Andy Pienaar, representing the Kommagas community, said they were concerned that the government will nationalise the land, further alienating the Kommagas from it. "This land rightfully belongs to the indigenous First People," he exclaimed.

People of Northern Cape

Kuruman

Public hearings in Kuruman in the Northern Cape on a possible review of section 25 of the Constitution were largely one-sided, with the overwhelming majority of submitters being in favour of the expropriation of land without compensation.

Speaker after speaker informed a delegation of the Joint Constitutional Review Committee which is currently visiting South Africa's biggest province that they want their land back without compensation as it was taken away without payment.

Mr Obert van Wyk said the Northern Cape is geographically the biggest province and has more land than other provinces. The land, according to him, is in the hands of the private sector and most of the private sector is white. "They came here without land. We will wait for the amendment of the Constitution."

Ms Sarah Marioke said: "We need our land now. Not tomorrow. Now. The Khoi-San are the original inhabitants of the land. They should be recognised." Speakers Mr Samuel Petrus and Mr Lesedi Morapedi made it clear that they are in favour of the amendment of the Constitution.

Mr Comfort Assegaai said whites poison the land with chemicals in order for black farmers to fail in agriculture.

Many farm workers indicated that land expropriation is not a threat to food security, as whites want everyone to believe, as they have been working the land for years for white people and know how to work the land.

During the morning session Ms Renate van der Merwe said the Constitution should not be changed as she is convinced it would ruin South Africa financially. Mr Henk Maree said this is just a way in which the government wants to amass more land, that is why he is against the amendment of the Constitution and expropriation of land without compensation.

Mr Frank Fourie maintained that this process is just an attempt to make South Africans tenants in their own land. He claims this process will block people from owning land.

A female submitter, who did not identify herself, said the Khoi-San people are the original owners of the land. "When you expropriate land, who will get the land? We are against this expropriation."

Mr Lewis Nzimande, the Co-Chairperson of the committee, assured the public that the committee values all their inputs. "South Africans must be assured that we will take all inputs into consideration when we deliberate on this very critical matter."

The delegations moved to Kimberley the following day for the last leg of its Northern Cape public hearings.





Mixed views in Mokopane, Limpopo on changes to section 25 of Constitution

Some participants in public hearings in Mokopane in Limpopo on the desirability of amending section 25 of the Constitution to allow the expropriation of land without compensation say that they are against the changes, as they believe the amendments will lead to job losses, which will be harmful in a country that has a 25% unemployment rate.

A farmer in the area, who did not want to be identified, said that land and property rights are the bedrock of the economy and it would be impossible to amend section 25 without affecting food security and the economy. "It is not possible to rip out a cornerstone of a free market economy in South Africa and not expect an impact. The next thing there will not be food," the farmer said.

One of the first participants to speak in Mokopane said section 25 as it currently stands is sufficient for people to access land and that government's

failure to implement it properly is to blame for landlessness. "I want people to understand that section 25 is not the problem. The problem is the government, because if they had done what they promised, the people would have land by now," the lady said.

She further argued that what the country needs now is job creation. "The people want jobs and if we are going to amend section 25 of this constitution, jobs are going to decrease because investor confidence will decrease. That means we will have fewer jobs, our economy will not grow and we will not be able to create sustainable jobs," she argued.

Mr Joe Kelsner, a cattle farmer from Lephallale, said he is against the amendment of the constitution and for property rights. "We believe that property rights are the main pillar for the stabilisation of this country. We also believe that the expansion of property rights has been hamstrung by government's inability to give title deeds to beneficiaries of land reform. This makes it impossible to use the land as collateral to get loans, which is essential for an upcoming farmer," he contended.

Mr Kelsner also said that food security must be considered when debating the land issue. "For example, our industry contributes about 2% to gross domestic product and this will be impacted by amendment of section 25," Mr Kelsner said. He further argued that amending section 25 might have an impact on emerging black farmers in the meat industry. "42% of emerging cattle farmers in this country are black, 14% in sheep and 71% in the goat industry. They will be affected and we really hope that food security is the main focus when we talk about expropriation," Mr Kelsner said.

A white farmer, who said his African name was Makhokhoba, was against the state being the custodian of the land. "I have given my workers land because they need to own land. The state should not own land. Land should be owned by the people of South Africa," he said. Mr Makhokhoba further said that improvements need to be made to support land beneficiaries, as many of the projects arising from land reform are dysfunctional.

Public hearings concluded in Tzaneen in Limpopo



Mr Vincent Smith

Despite the fact that the issue of land is a highly emotive one, the hearings went on with minimal interruption in Limpopo. "In instances that there were interruptions members of the delegation where collectively able to quell those interruptions to enable the hearings to continue," said Mr Vincent Smith, the Co-Chairperson of the Committee.

The attendance of these hearings by members of the public has been impressive in Limpopo and the Committee is hopeful that in other provinces the trend will continue. The delegation apologised for the small venues that have been utilised so far because the attendance of the hearings has far exceeded expectations leading to full halls requiring overflow areas in all the four areas visited. "On behalf of Parliament, I would like to extend a word of gratitude to the people

of Limpopo for having come out in their number to contribute to this important discussion of land," Mr Smith emphasised.

The quality of arguments presented has set the standard for other provinces. The delegation has always maintained that this is not a referendum where it considers the how many people are for or against the amendment. What matter is the quality of arguments made and Limpopo has delivered valuable points of consideration for the committee to ponder.

Those that support the amendment of Section 25 have largely based their argument on the need for redress for colonial and apartheid era dispossession. Secondly, a strong belief that land holds the key to economic emancipation of a majority of poor black South Africans was also advanced. Thirdly, this group emphasised that landless people have the skill set to make productive use of land if they are to get it.

Those that are against the amendment have generally raised concerns on the impact the possible amendment

will have on the economic survival of the country. This is because they believe expropriation will drive away potential investors from the country. Secondly, they argued that the current constitution provided for the expropriation of land and that it was the lack of political willpower that has led to the failure of the land reform process. Thirdly, this group believes that the amendment of Section 25 will threaten food security in the country. According to this group the state should not be the custodian of land and people must own their title deeds.

The full committee will, on the conclusion of all public hearings, ponder the merits of the arguments made and make its own recommendation for consideration by the mandating houses, the National Assembly and the National Council of Provinces. The recommendation will be made by 28 September 2019.



Ordinary South Africans expressing their views

Botshabelo Hall in Mangaung in Free State packed in spite of cold weather

An overwhelming number of the people making oral submissions at Botshabelo were in favour of amending section 25 of the Constitution to allow for the expropriation of land without compensation.

The Co-Chairperson of the committee, Mr Lewis Nzimande, praised the orderly crowd that gathered since early morning to make their voices heard on the matter. He expressed gratitude to the public that braved the cold weather to make sure Parliament heard their voices.

The committee held public hearings in the Free State until Wednesday 4 July. The committee heard that some members of the public supported the amendment as it will create jobs. Some presenters indicated that the government should be unapologetic when it takes land as land is an integral part of the struggle for freedom. The committee also heard that some families were forced off their land in the country, which is now prime property at lucrative prices, which will be unaffordable to ordinary South Africans. Submitters said it was not only land that was stolen, it was cattle as well. Rural women said: "One hectare, one woman."

One presenter felt the land should rather be equally distributed between all South Africans, irrespective of colour, whilst other participants felt a compromise position would be

to rather make farms compliant to Black Economic Empowerment and skills transfer rather than just taking away farms. Others felt food security and livelihood would be threatened by amending section 25 of the Constitution.

Mr Nzimande praised the meeting. "The public has been extremely patient and orderly. When the venue was full, they patiently queued outside until they could be accommodated inside to have a say, whilst the proceedings were audible outside in the cold for an opportunity to speak. We heard divergent views on this matter, all of which we take very seriously," said Mr Nzimande.

Mr Nzimande emphasized that all South African are welcome at the hearings and that the committee does not share the view that white people were not needed at the hearings.

"The great numbers we have seen at the hearings so far are an indication of the critical importance of land." In Welkom members of the public were clear – they want their land back. Speaker after speaker made it clear that the land was stolen from black people in this country and therefore needed to be returned without compensation. An overwhelming number of the people making oral submissions to a delegation of the Joint Constitutional Review Committee were in favour of amending section 25 of the Constitution to allow for the expropriation of land without compensation.

Ms Vell Gutter, a participant, told the committee that as a white person with a conscious, she cannot deny that black people were tricked regarding their land. "They were hospitable when you came, and whites took the land."

Mr Tsedisio Tlau, a teacher from the area, said poorer schools in the area had no sports fields, as they had no land compared to their former model C counterparts who had big fields. Ms Moloboheng Semela, a Rastafarian, was clear: "Slave masters now stand here and cry like babies. Our Rastafarian forefathers were evicted from our land. We need our land back."

A traditional healer indicated she wants the land back because when she searches for herbs, she is charged by farmers. A representative from Agri-SA in the Free State said they support sustainable land reform, but do not support expropriation without compensation. Mr Willie Prins, who said he trained several black farmers, said title deeds are the way to go, as land alone will not solve the question of poverty and unemployment. Banks do not provide loans to farmers without title deeds, he reminded his listeners.

The Co-Chairperson of the committee, Mr Lewis Nzimande, had to quieten the crowd several times when they tried to drown out the voices of speakers they did not agree with. "This is a parliamentary process. You will hear views you do not agree with, but you have to respect them. We are here to listen to all South African who want to speak," he said.

Daytime Constitutional Hearings not untoward

A delegation of the Joint Constitutional Review Committee has reiterated that there is nothing untoward about holding hearings during the day.

Various suggestions and questions have been raised that the committee should have held the hearings in the evening, to enable workers to participate. It is the committee's considered view that no matter when the hearings were held, similar suggestions would have been made.

"If we held the hearings at night, those that work night shift and those that use public transport to the hearings would have complained. We are well aware that it is nearly impossible to please everyone"

- Mr Vincent Smith

"If we held the hearings at night, those that work night shift and those that use public transport to the hearings would have complained. We are well aware that it is nearly impossible to please everyone," said Mr Vincent Smith, the Co-Chairperson of the committee.

It is also worth noting that contributions to this process have been made through both oral and written submissions. "Considering the extended period for written submissions, the committee is comfortable that

adequate opportunity was given to every South African to participate. Furthermore, this process is not a referendum that will be determined by views in the majority, but rather the content of the argument made," Mr Smith emphasised.

The committee is thus far satisfied with the contributions made during the hearings.





OUR SOUTH AFRICA – THE SUN

The sun heals the divisions of the past, improves the quality of life of all South Africans, frees the potential of each person and builds a united and democratic South Africa, taking its rightful place as a sovereign state in the family of nations.



OUR PEOPLE – THE PROTEA LEAVES

Our people, building on the foundation of a democratic and open society, freely elect representatives, acting as a voice of the people and providing a national forum for public consideration of issues.



OUR PARLIAMENT – THE DRUM

The drum calls the people's Parliament, the National Assembly and the National Council of Provinces, to consider national and provincial issues, ensuring government by the people under the Constitution.



OUR CONSTITUTION – THE BOOK

Our Constitution lays the foundation for a democratic and open society based on democratic values, social justice and fundamental human rights. It is the supreme law of our country, and ensures government by the people.