



CENTRE FOR
DEVELOPMENT
AND ENTERPRISE

**Centre for Development and Enterprise (CDE)
submission regarding the review of Section 25 of the
Constitution**

Submitted to:

Parliament's Joint Constitutional Review Committee

Committee Section

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Submission

In 2008, CDE produced a major report on land reform. The proposals in this report sought to ensure that justice is done, that land reform beneficiaries are made permanently better off, and that South African agriculture transforms while continuing to attract investment, generate exports and provide a growing number of good jobs. The CDE recommendations were supported by BLSA and other organisations in the private sector and widely praised inside key parts of government. They remain relevant to today's concerns. All CDE reports on which this submission is based are listed with links at the end of this document.

Introduction

In 2008, CDE argued that:

“For most South Africans, the history of land is one of pain and injustice. People must be fully compensated for land and assets that were stolen...the future of the land issue will affect the country's ability to reach its economic growth targets, produce its own food and compete in global markets.”

In February 2018 Parliament passed a resolution that instructs the Constitutional Review Committee to review Section 25 of the Constitution and other clauses where necessary. Speaking in parliament, President Ramaphosa said:

“As we implement this resolution to expropriate land without compensation, we should be clear on how we will not damage the economy and food security....

“There is a strong case to be made that the use of expropriation without compensation in certain circumstances to advance land reform is consistent with the provisions of the Constitution”.

The President has subsequently reiterated that land reform would “... unfold within a clear legal framework and would not affect economic growth.”

CDE's view

The enquiry into whether or not to amend s25 and to sanction expropriation without compensation creates a set of important concerns. While the prudent use of existing expropriation powers may be necessary and desirable if exercised in the national interest (especially if this designed to test the appropriate interpretation of s25), CDE opposes any changes to the Constitution in this respect.

There are real costs to expropriation without compensation and, especially, to changing the constitution.

- Doing so creates new uncertainties regarding the security of property rights, and these will affect investment for many years to come, both within agriculture and beyond that sector. South Africa's hopes of higher and more inclusive economic growth will not materialize if property rights are uncertain.
- Recipients of land that is expropriated without compensation may not be able to benefit from the value of the land that they receive. This will be the case, in particular, if recipients of land cannot sell or borrow against their new land.
- Expropriation without compensation may create numerous and insurmountable technical difficulties associated with valuing improvements, determining the value of mortgages, making banking services available to all property holders, and so forth.

The requirement to pay compensation has not been the most serious constraint on land reform in South Africa to date. Much more serious stumbling blocks to land reform include other constraints. These include increasing evidence of corruption by officials, the diversion of funding for land reform to elites, a lack of political will, and a lack of training and capacity.

Moreover, many, if not the majority of participants in land reform projects are not better off after receiving their land. Indeed, most land reform projects involving large numbers of people being resettled on newly acquired land have been abject failures – in the words of a senior official: “assets dying in the hands of the poor.”

The current restitution process is in deep trouble. It has stifled many voluntary initiatives in the private sector due to the scale of restitution claims now gazetted on private land and the delays (lasting years) in resolving them.

The fact is that South Africa is an urbanizing country, already around 65% or more urbanized. There is evidence that most rural South Africans do not want to become farmers. The vast majority of people want a secure place to stay and access to employment. The nature, location and volume of land hunger should be properly assessed before pursuing or reforming the current land reform process. We believe that there is probably less land hunger than is sometimes claimed, and much of what there is can be addressed through tenure reform because the demand for land is largely for residential purposes.

South Africa needs to place far more attention on the urban dimensions of land reform. People migrating to cities and towns need places to stay that are close to economic, educational and many other opportunities.

And lastly, the vast majority of South Africans live with insecure title in both rural and urban South Africa. This is a key dimension of land reform that receives too little attention.

All these issues do not require a change to SA's constitution but a new commitment to a land reform policy that can be implemented and deals with the many different dimensions of this complex and important issue.

Changing the constitution will therefore not address the major land reform challenges.

RECOMMENDATIONS

If the country is to take land reform seriously, CDE would recommend two related actions:

- The establishment of an **action-oriented public-private partnership** comprising senior leaders in government (including cities), and the private sector, including agri-business and the property sector. **This presidential task force should have its own budget and report every six months to Parliament on progress with respect to land issues.**
- This partnership should be supported by the allocation of more funds to land reform and if necessary in the national interest, making use of the pre-existing “just and equitable” clause of the constitution.

The priorities for taking land reform forward should be:

- *Completing restitution speedily:* The resolution of the restitution impasse is the first priority for successful land reform, because it lies at the root of so many other problems in virtually all regions of the country. Large firms in this sector have in the past offered assistance with creative plans to make speedy progress in generous settlements – they need willing, competent partners in the state.
- *Get redistribution on the right track and increase its scale in both rural and urban areas:* To do this we need an authoritative audit of state land and informed knowledge of the nature of demand for land (whether for settlement or farming; by whom and in which parts of the country). A partnership approach is needed to acquire land in a market supporting way (a new public private agency might help buy land cost-effectively) that meets the diverse needs of poorer people.
- *De-racialise commercial agriculture* through more business support for redistribution and effective farming in each sector of the agricultural economy, more broad based BEE deals, and the establishment of villages for farm workers and their families. Getting commercial agriculture back onto a sound footing may also require redesigning the land tenure laws affecting both commercial and communal land.
- *Tackling rural poverty directly.* Establish a blueribbon commission to develop an economic and development strategy for “rural routes out of poverty”; establish a large education fund of state money to provide opportunities for rural learners to go to agricultural college, quality boarding schools and tertiary education.
- *Spending more on land reform and spending it better:* Government has rightly been cautious in its allocations to the DLA and has had to retrieve unspent funds in the past. A bigger budget is essential for land reform, but this can only happen if the capacity is significantly improved.

South Africa needs a viable strategy for land reform that addresses real needs as quickly as possible with as little economic disruption as possible. This will not happen if there are changes to the Constitution.

Centre for Development and Enterprise

June 12, 2018

APPENDIX 1 CDE Land Reform Publications

The Looming Land Restitution Crisis, 23 May 2018

[The Full Report](#)

CDE, Business and Land Reform, 4 May 2018

[The Full Report](#)

Land Reform in South Africa: Getting back on track, 7 May 2008

[The Executive Summary](#)

[The Abridged Report](#)

[The Full Report](#)

Farmers' Voices: Practical perspectives on land reform and agricultural development,

7 February 2008

[The Full Report](#)

Land Reform in South Africa: A 21st century perspective, 12 May 2005

[The Abridged Report](#)

CDE Land Reform Op-eds

[Bungled land claims have created tinderboxes in SA's rural areas](#), 15 June 2018, *Business Day*

[Land Reform Plan Has Been Drawn-up- It Just Needs Willing Leaders](#), 24 April 2018, *Business Day*

[State Bungling Threatens to Turn Land Reform into a National Crisis](#), 25 May 2008, *Sunday Times*

[Land: The Real Obstacles](#), 7 May 2008, *The Witness*

[Why Land Reform is Stuck](#), 7 May 2008, *Mail & Guardian*

[Change Course on Land or Face Grave Consequences](#), 7 May 2008, *Business Day*

[Grim Harvest for SA Unless Problems are Met Urgently](#), 7 Feb 2008, *Business Day*

[Private Contribution to Land Reform Significant](#), 12 May 2005, *(Publication unspecified)*