



FW de Klerk
FOUNDATION

STATEMENT ON PRESENTATION BY FW DE KLERK FOUNDATION TO CONSTITUTIONAL REVIEW COMMITTEE ON POSSIBLE AMENDMENT TO SECTION 25 OF CONSTITUTION TO ALLOW EXPROPRIATION WITHOUT COMPENSATION

The FW de Klerk Foundation will today, Friday 26 October 2018, appear before the Constitutional Review Committee to make a presentation on its earlier submission on the possible amendment to section 25 of the Constitution. The Foundation regards this question as being of central importance to the future of South Africa - not only for successful land reform, but also for the future of property rights, the future of the economy, and the future of race relations in South Africa.

Together with numerous respected jurists, including the late Arthur Chaskalson CJ, as well as the High Level Panel appointed by Parliament and led by former President Kgalema Motlanthe, the Foundation believes that it is not necessary to change section 25 of the Constitution to achieve land reform and extend property rights to all South Africans.

Contrary to the view expressed in the parliamentary motion, “the current policy instruments, including the willing seller policy, and other provisions of section 25 of the Constitution” (sic) have not been the main factors hindering effective land reform. According to the High Level Panel Report, the failure of land reform thus far may instead be ascribed primarily to the incapacity of the relevant government departments, and to corruption. The present formulation of section 25 and a proper legislative framework can and should be used to speed up the land reform process and extend property rights to all.

Importantly, we further believe that an amendment of section 25 to allow expropriation without compensation (EWC) would have extremely negative political implications for the country, including political instability and even anarchy. It would all but destroy the national accord reached in 1994 and 1996. Economically speaking, it is simply not possible to amend section 25 to allow for EWC without harming agricultural production and food security severely, and without very negatively affecting future investment and other sectors of the economy - contrary to what the parliamentary motion and the ANC’s resolution at Nasrec expressly intended.

From a legal point of view, an amendment to section 25 that targeted a specific group of South Africa’s population, would run contrary to the “law of general application” of section 36(1)(a), specifically the principle of equality. In addition, should the amendment remove the reference to just and equitable compensation and the jurisdiction of the courts to determine this, it would infringe upon one of the foundational values of the Constitution, namely the Rule of Law.

The Foundation’s strong views in this regard do not, however, mean that we support the *status quo* on property rights and land reform.



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Therefore, the Foundation further makes a number of recommendations on how to extend property rights to all South Africans and effect meaningful land reform. These include the following:

- The need for policy coherence and a proper legislative framework for land reform/redistribution (including a proper definition of land reform);
- The need to amend tenure reform laws because they provide inadequate legal protection;
- The need for secure informal land rights in both urban and rural areas (including redistributed and restored land);
- The urgent need for a full-scale and accurate land audit; and finally
- The need to establish a special purpose vehicle (SPV) by law, to extend property rights to all South Africans and implement land reform effectively. This SPV should ideally report directly to the Presidency and should have the mandate and capacity to work horizontally across departments, and vertically from local to provincial to national level.

The FW de Klerk Foundation believes that working within the parameters of the present section 25, and implementing these matters urgently, could speed up land reform substantially and extend property rights to all South Africans.

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