



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

# **Report on Trends on Public Hearings on the Review of Section 25 of the Constitution**

**Constitutional Review Committee**

**22 August 2018**





# Introduction

- The National Assembly (NA) and the National Council of Provinces (NCOP) took resolutions to review Sec25 of the Constitution in February 2018 and March 2018 respectively
- The task was referred to the Constitutional Review Committee (CRC) to conduct on their behalf
- The resolutions required the CRC to consult members of public
- CRC was also required to report back to the Houses



# Background

- The Constitutional Review Committee conducted public hearings in all (9) provinces from the 26<sup>th</sup> June to the 4<sup>th</sup> August 2018
- The aim of the public hearings was to solicit the views of the public as part of the public participation process
- The aim of this report is to present the findings from public hearings – qualitative information



# Methodology

## *Prior to Public Hearings*

- CRC hosted a colloquium on Sec25 of the Constitution on progress made wrt the implementation of sec25, understand the successes and limitations of sec25
- Deployed a team of public educators to the selected districts to raise awareness of the relevant clauses of sec25 in order,
- to enable members of the public to engage meaningfully in discussions



# Methodology cont...

## *Prior to Public Hearings*

- Parliamentary communications team sent out media statements on the public hearings
- Co-Chairpersons also gave interviews to various media companies
- Parliament took reasonable steps to ensure maximum participation in public hearings by transporting members of the public to the identified venues



# Methodology cont...

## *Facilitation of Public Hearings*

- Guiding timeframe was from 11am – 4pm
- However, most hearings finished after this time
- House rules were explained
- Sec25 of the Constitution was either read out or copies of the section handed out
- The purpose of the public hearings was explained
- As many people as possible were given the opportunity to give their inputs

# Findings



## Demographic Information

**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 Goodwood	Western Cape	Citrusdal, Swellendam Goodwood

# Findings cont...



- Whites, as beneficiaries of racially based land policies, were allowed to own land in their own right & exchange it in the market as a commodity, and accumulated wealth over time.
- Redressing the inequitable land distribution patterns must result in restoration of rights and dignity for blacks in general.
- “Land Must be redistributed to the rightful owners”. It raises questions about who the rightful owners of land in SA are. Divergent views exist.
  - Descendants of the Khoi & San see themselves as the rightful owners. Other black African communities see themselves as rightful owners too.
- Khoisans believed that the constitutional limitation of restitution (1913 cut off date) excluded them from the right to restitution.

# Demographic Information cont...



- Thirty four (34) towns were visited during public hearings
- On average 3.7 towns per province were visited



# Overview of findings



- High level of landlessness among the majority of Africans
  - A legacy of apartheid and colonial dispossession.
  - Skewed patterns of land ownership
  - Participation in agriculture and related value-chains skewed.
- Divergent views in relation to expropriation without compensation as a mechanism to speed up redistribution.
  - Redress the injustices of the past at a lower cost to the state;
  - Bring more people in the mainstream of SA economy through land reform.
  - Unintended consequences: economy, job losses, investment stagnation (lack of investment in the economy),
  - Property is an expansive concept (not only about land), any amendment should take note of that – concerns about housing and people's investment on their properties.

# Overview of findings continue



- Current market-based land reform programme has not helped to redistribute land at scale.
- Given the failure of market-based land reform, expropriate land in the public interest (divergent views):
  - Do not amend the constitution. What is required is law of general application to clarify the matters in Section 25.
  - Take matters of expropriation to the judiciary for clarification.
  - Introduce amendments that clarifies circumstances under which land can be expropriated without compensation and introduce law of general application.

# Overview of findings continue



- Amend the constitution because under the current provisions, it would be very difficult, if not impossible, to achieve expropriation without compensation.
- Tenure arrangements (divergent views)
  - State custodianship, and equitable allocation of use rights.
  - Redistribute to give private property rights through title deeds
  - Contrasting views traditional councils – some want them to own land and others reject that because chiefs never owned land

# Discussion - findings cont...



## 1. Agrarian Structure Inherited From Apartheid System

- About 87% of the total land area was exclusively owned by White population (mostly white-owned farmland)
- On farms, black families lived as labor tenants, farm dwellers & farm workers with insecure tenure, continuously living under threats of eviction
- The majority of South Africans were crammed in the 13% of the total land area, mostly the so-called reserves and former Bantustans.
- The legacy of this era is a structural problem where Blacks were pushed to the margins of the economy which whites dominate the productive sectors

# Findings cont...



## 2. Land-based identities & rightful owners of land

- Blacks experienced more than land dispossession .
- From early land dispossessions in 1652 to the dispossessions and forced removals of the colonial and apartheid governments, communities were distorted, and the identities constructed around those communities were interfered with.
- Land dispossession took away peoples dignity away, i.e. communities, households & individuals dignity, pride and sense of being.
- Dignity is associated with self & equal worth, communities the right to live as autonomous beings and not as subjects of authority of another as is the case with farm dwellers/labour tenants

# Findings cont...



## 3. Perspectives on constitutional provisions for expropriation in the public interest and conditions for compensation

- Amend the constitution:
  - Tension in sections 25(1) and (2) protection of property rights and expropriation subject to compensation.
  - S.25(1) – (3): It ties government to the payment of compensation at market value of the property, and therefore a stumbling block to a more affordable and faster land redistribution.
- Do not amend:
  - S.25(3): compensation must be just and equitable; and the primacy of market value of property is not provided for in the Constitution.
  - S.25(8): “No provision of this section may impede the state from taking legislative and other measures to achieve land, water, and related reform... in accordance with provisions of section 36(1)”.

## Findings cont...



- Sections 25(5), (6) & (7) - redistribution, tenure reform & restitution - were advanced as key instruments to advance land reform in SA, but with s.25(1) to (3) expropriation without compensation, even for values below market-value would be extremely difficult.
- The current constitutional order resulted in less than 10% of white-owned farmland transferred to blacks over 24 years as opposed to projected 30% by 2014.
  - Some blame the market-value approach to land acquisition, ever escalating prices of land (suggesting that it is protected in terms of the Constitution)
  - Some blame government inefficiencies. Reference to the HLP report was made: corruption, capacity constraints of the DRDLR and the Commission, real terms decline in land reform budget.



**THANK YOU**