

**ORAL PRESENTATION  
BY THE FOUNDATION FOR HUMAN RIGHTS**

**ON IT'S SUBMISSION TO THE CONSTITUTIONAL  
REVIEW COMMITTEE'S CALL FOR COMMENT: REVIEW  
OF SECTION 25 OF THE CONSTITUTION**

**6 September 2018**

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# PREAMBLE

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The position taken by the Foundation for Human Rights on whether Section 25 of the Constitution should be amended to allow for expropriation of land without compensation reflects the views of Management and Programme staff and is based on their experiences and engagement with communities, community-based organisations, farmworkers, farm dwellers, labour tenants and women on farms. The position taken on Section 25 is not reflective of the views of any individual member of the Supervisory Board.

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# WHO IS THE FOUNDATION FOR HUMAN RIGHTS (FHR)?

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- FHR is an independent civil society organization, was established in 1996 through a Financing Agreement (FA) between the European Union and the South African government, initially to overcome the legacy of apartheid.
- It is presently funded through sector budget support with the Department of Justice and Constitutional Development (DOJ&CD) being the line department.
- FHR has supported civil society organisations to promote the rights contained in the Constitution.

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## KEY CONCERNS

- Slow pace of land reform
- Racial and gender inequality in land ownership which continue to exist (Land Audit, DRDLR 2017)
- Control of land by individuals, especially women in Communal areas is still a challenge (High Level Panel)
- Access to land in urban areas
- High levels of hunger (Oxfam, 2014)
- High failure rate of land reform projects

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## OUR SUBMISSION

- We submit that Section 25 (1) of the Constitution should be amended to make it less ambiguous in its attempt to balance the interests of existing property owners and the vast majority of those who were dispossessed of their property.
- Clarity is also needed on Section 25(3b) ... “the history of the acquisition”.
- The Constitution lists a number of factors that must be included when compensation is considered. This is not an exhaustive list.

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# OUR SUBMISSION

- Amendment to Section 25 should clearly provide for land expropriation without compensation of privately owned land which is not used, under-utilised, abandoned or held for speculation.
- Land that is currently being utilised by farm workers, farm dwellers and labour tenants should be expropriated without compensation from current owners and be given to these vulnerable groups.
- Compensating farmers for this land will amount to over-compensation, as farm workers, farm dwellers and labour tenants have already paid for this portion of land through free-labour provided over many decades for which commercial farmers have made profits.

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# WHO SHOULD BE KEY BENEFICIARIES OF THE EXPROPRIATED LAND?

- Women
- Farmworkers/dwellers, labour tenants and Small-scale farmers
- Youth
- Poor people in rural and urban areas

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## Recommendations (1of2)

- Section 25 of the Constitution should be amended.
- Land redistribution should be focussed on vulnerable and marginalised communities such as women, farmworkers, farm dwellers, labour tenants, unemployed youth and homeless persons in urban areas.
- Women must be allowed title in their own names in rural areas.
- Recommendations of the High Level Panel must be implemented to allow direct ownership of land by people in rural areas.
- A simpler cost-effective method of transferring and registering title deeds should be developed and implemented.
- Allotments in urban areas should be allocated to unemployed persons for the purposes of growing their own food.

## Recommendations (2of2)

- Land for housing should be allocated to persons in urban areas, especially those in informal settlements close to job opportunities.
- A Land Ombudsman must be appointed with the specific task of assisting vulnerable and marginalised communities to acquire and work land.
- A land CODESA/SUMMIT must be held, where a new agreement on how to improve and take land reform forward will be discussed.

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# THANK YOU

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