On behalf of The Association for Rural Advancement we would like to thank the Committee for giving us the opportunity to express our views on the question of Land and it is indeed an honor to be here.

**Who is AFRA**

The Association for Rural Advancement is a non-governmental organisation (NGO) established in 1979 to assist the marginalised black people to resist forced removals. Since then the organization has evolved, and is now working towards an inclusive, gender equitable society where rights are valued, realised and protected, and is mainly focusing on farm dwellers.

Our view in relation to the question at hand is that whatever recommendation the Committee makes there has to be a certain way of going about it and our contribution to that are proposals which are supported by what has been coming from the ground.

**The first proposals relates to Amending the constitution**

One of the issues with this current section is that there is no mention of the words expropriation without compensation and in this regard we are saying that in amending this section this must be explicitly clear. Yes land is indeed a form of property however to ensure that people’s land rights are realized, protected and they have secure tenure we may want to look at separating the right of land from that of property because for Land Reform to be realized property such as jewelry and vehicles need not to be expropriated to achieve this.

The High Level Panel recommendations made reference to the need for multi-stakeholder structure this Panel was initiated by parliament to review government interventions and make recommendations and we believe that this was a good mechanism.

**The second proposal relates to testing of the current Constitution and other Land Reform policies and Legislation**

It is evident that there has been a heavy reliance on the market value when determining the amount of compensation which is only one factor in terms of s25(3) of the Constitution and that there has been no application of the other factors which are: current and historical use of property, its acquisition, the extent of state subsidy and the purpose of expropriation.

Therefore, it has been argued that if one had to apply all of these above factors in this subsection one can actually arrive at zero compensation. This is because section 25 (3) talks to a just and equitable amount and zero rand can be that amount. So our plea is that if the recommendation is to amend S25 of the Constitution, while that is done section 25 as it stands needs to be tested by applying all of the factors in section 25 (3) to see if zero compensation can be reached.

A practical example would be the case of labor tenants in relation to the land that they are currently occupying and we are of the view that in applying the above factors one can arrive at zero compensation. The main reason is because labour tenants currently live on and use the land, and transferring it to them will not affect food security, destabilize the agricultural sector or undermine the economy because labour tenants already occupy and use this land[[1]](#footnote-1). Moreover the land owner does not derive any direct benefit from that piece of land. We are therefore of the view that these are the types of occupiers that can be a test case for Expropriation Without Compensation in the current constitution.

The Extension of Security of Tenure Act 3 0f 1996 as well as Labour Tenant Act 62 of 1997 forms part of a process which is aimed at achieving land reform. However, as per the High Level Panel findings, this process has been slow. In order to fast track this process some ground work needs to be done if the recommendation is that this section of the Constitution be retained then the Expropriation bill must be finalized to allow for expropriation without compensation.

It therefore remains clear that whether there is an amendment or not Parliament and leaders in their respective organizations need to initiate and facilitate a process that will allow long sustainable solutions to be reached in order achieving land reform. In finding these long term sustainable solution we are calling for a much deeper conversation on this issue and all of these processes initiated by this Committee have opened up the conversation. What the people on the ground need is the implementation of Land Reform and for this to happen there needs to be an inclusive and constructive process.

This process should encompass multi stakeholders which will include people on the ground themselves as they are faced with different situations on the ground, all relevant government departments, academics as well as experts. In conclusion the Association for Rural Advancement is of the view that this inclusive process should pick up from where the High Level Panel left off.

1. Why Labour Tenants is a good case for Expropriation without compensation, AFRA 2018 [↑](#footnote-ref-1)