



COPE™
CONGRESS OF THE PEOPLE

“We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights...and ...*
- Improve the quality of life of all citizens and free the potential of each person...’*

CRC REPORT





1. WITHOUT PREJUDICE

We reserve our rights herein

We believe that the processes and requirements in law that are required to be respected and followed by the committee have not been properly complied with and finished.

Constitutionally, our democracy is both representative and participatory in nature.

In this regard we note that the Constitution requires the National Assembly to ensure and facilitate the involvement of the public in its (and its committee's) legislative and other processors. Similar provisions exist in respect of the National Council of Provinces.

We note in this regard that the committee is yet to receive and consider a report on the written submissions made by the public and thus question how the committee's report can be considered given this defect.

Further, hereto, we record our concern at the arbitrary disregard of a large number of written submissions lodged with the committee on the pretext that they were 'duplicate submissions'.

1.1 PROCESS

The Congress of the People is adamant that the request for Observations and Recommendations on the amendment of Section 25 of the Constitution are grossly pre-mature.

Over the last few weeks we have continuously requested the Committee and Parliament's administration to enable Members of Parliament to perform their Constitutional Responsibility.

Parliament made a call to all South Africans to participate in the process with regard to the possible amendment of Section 25 of the Constitution. South Africans, in their hundreds of thousands, reacted to this call by Parliament by, amongst other means, submitting written submissions.

The now 'adopted' but previously **rejected** Service Provider's report states that **630 609 written submissions** were received. This report of dubious standing refers to spreadsheets which have not been made available to members of the Committee.

COPE sent an email requesting the aforementioned spreadsheets, but as at the time of preparing this report we have not been furnished with the spreadsheet annexures to this report.

The Committee was also informed that Parliament's IT department would upload those written submissions received by email onto a shared server for Members of the Committee to peruse.



According to the Committee's support staff, the uploading these emails has not been completed and there is no indication when this will be finalized.

As matters stand Members of the Committee do not have access to these emails and are not in a position to peruse them.

We record that the Chairpersons of the committee indicated that Members of Parliament could go and access the email submissions on a Staff Member of Parliament's computer during office hours.

This 'ruling' alone shows that the Chairpersons of the Committee are hampering the ability of members of Parliament to perform and execute their constitutional responsibilities.

It is a moot point that although as Members of Parliament we have taken the prescribed oath, the Chairpersons will only entrust parliamentary staff members and an external agency with access to the emails and not members of Parliament.

We record that of the purported 630 609 written submissions received, some 250 000 hand delivered submission were made available in a boardroom for Members to peruse in their free time, outside of Committee hours but during ordinary office hours.

The dubious Service Provider Report states that out of the 630 609 submissions received, they rejected –

- 176 780 Duplicate Submissions (which includes emails received from the IRR);
- 3602 Blank Submissions;
- 594 Unrelated submissions;
- 111 Enquiries

It is important to state that it was not the responsibility of an 'employment agency' contracted to do data capturing, to decide whether a submission can be rejected, but it is the sole responsibility of the CR Committee and Members of Parliament.

None of these rejected submission were made available to committee Members to peruse.

The request to interact with the High Level Panel Report and the Panel itself was rejected.

The High Level Panel was appointed by Parliament. Its subsequent report which contained substantial findings and recommendations on land reforms matters has been circulated to all affected Parliamentary portfolio committees to interact with its findings and recommendations.

It appears irrational for Constitutional Review Committee to refuse to interact with this report and the High Level Panel itself.



We also record that a request to invite the Surveyor General to the Committee was rejected and find this also to be irrational as the Surveyor General could have provided the committee with vital information on land ownership and changes therein.

Over the last few months we have seen many a ANC Member stand up and say we will change the Constitution and there is nothing you can do about it, effectively pre-empting the outcomes and making a mockery of the call for public submissions.

We have seen and heard the President of the Republic of South Africa pre-empting the outcomes of the process on the 31st of July 2018, whilst public hearings were still being conducted and prior to any consideration having been given to the 630 609 written submissions received.

From the conduct of Members of the Committee and the Executive, it seems that Parliament's entire public participatory process was not to gauge and consider public opinion and suggestions but merely to tick a box.

2. OBSERVATION

COPE was founded in defense of our constitutional order, in its vision of a just and equitable Society, and in the values and principles that underpin it.

As such, COPE firmly believes that the injustices and divisions of our past **must** be addressed and we fully subscribe to the fundamental need for land reform; for land restitution, redistribution and security of land tenure.

We acknowledge, as former Deputy Chief Justice Moseneke put it, that

'our constitutional democracy was forged on the anvil of division, past injustice and economic inequality, but also in the hope for reconciliation, nation building and social cohesion'.

Our Struggle was not merely for political emancipation, but also for socio-economic equality.

It is for this reason that our Constitution enshrines not only political and civil rights, but also socio-economic rights. Our Constitution is emphatically transformative.

As Moseneke put it,



'it is meant to migrate us from a murky and brutish past to an inclusive future animated by values of human decency and solidarity'; it contains a binding consensus on, or a blue print of, what a fully transformed society should look like'

As the Congress of the People, we believe that the Constitution, in its current form, provides all the powers required to ensure the full realization of just and equitable land reform.

The idea that the Constitution is restrictive and that it hinders land reform is simply fallacious and devious – and potentially dangerous to our future prospects.

Our view is supported by former Justices of the Constitutional Court, Parliament's High Level Panel and their report, and Land Reform and Human Rights Institutions.

We face this damaging impasse as a consequence of the abject **failure of the ruling party and the state** to give meaningful effect to the provisions of section 25 (and section 26) of the Constitution, amongst others.

This has restrained and frustrated the realization of meaningful land reform and socio-economic transformation.

The lack of a legislative framework to drive and regulate land reform within the Constitution; the inability of government to adopt expropriation legislation aligned to our new Constitutional order; the gross maladministration, malfeasance and poor state capacity; corrupted outcomes; and capture by a ruling elite of land reform projects, represent the sad legacy of the ruling party and the state under their governance.

Parliament's High Level Panel Report concludes as much.

It points to the failure of Parliament to create the necessary legislative framework; and of the failure of the Executive to ensure the coherent and effective implementation and realization of our land reform rights.

The report makes comprehensive recommendations and calls for crucial interventions. But nowhere does it call for the amendment of the Constitution.

Government has also yet to produce a comprehensive national land audit since the advent of democracy. Without a detailed audit of who owns what it is difficult to identify which land qualifies for restitution.

With respect to the need to secure land tenure, there is no need for any constitutional amendment. The issue here is about upgrading land tenure that is insecure by introducing Title Deeds, such as land under traditional authority control and land held in trusts such as the Ingonyama Trust.



Regarding concerns of exorbitant prices paid by government for land, the real issue is not the excess compensation sought by land owners, but rather the price agreed to by government.

The Constitution does not refer to market value but rather to just and equitable compensation given a set of circumstances.

We have listened to the views of South Africans across the country and to the submissions made in Parliament. We have perused the written submissions submitted.

We feel our peoples pain and frustration.

We heard the fears and concerns raised, and the potential consequences that may arise.

We are mindful that in addressing past injustices, we do so in the present and must mindful of the future.

We have grave concerns about the manner in which the CRC has gone about its task and reserve our rights therein.

3. CONCLUSION

The abject failure of land reform lies squarely at the feet of:

- Parliament that has not developed an appropriate and progressive legislative framework for its realization, nor exercised meaningful oversight over the executive; and
- The Executive that has failed to ensure the coherent and effective implementation and realization of land reform (and access to housing) rights.

The real hunger for land (and housing) is in our peri-urban and urban environments as South Africans migrate to our urban centres in search of jobs and a better life for all. We note in this regard that it is the state that is responsible for the progressive realization of housing.



The potential consequences of amending and weakening the Constitution's current property rights provisions are very dire to our future economic growth and job creation prospects and to the stability of our banking sector.

Any decision to change the current provisions of section 25 of the Constitution is, at this time, reckless and irresponsible; not in the best interests of the nation and our people; and probably counter-productive

We reiterate our position that:

- We do not support the principle of the expropriation of land **without** compensation as a means to achieving land reform.
- South Africa belongs to all who live in it, united in our diversity. Our histories and our future destinies are inextricably intertwined as one nation. Expropriating land from current landowners without compensation to right a previous injustice merely creates further injustices.
- Expropriating land without compensation is not for 'free'. Someone somewhere within the economy will have to pay.
- We support dialogue to find solutions to government's and our collective failure to ensure the realization of land reform within our Constitutional framework and given our complex history and mutual destiny.

We concur with the findings and recommendations as set out in the High Level Panel report.

4. RECOMMENDATIONS

- 4.1 The Congress of the People are firmly of the view that the process followed with respect to the written submissions were flawed and makes an appeal to the Constitutional Review Committee and Parliament to –
- a) make available all email submissions that were submitted within the time frame on the call for Public comments by Parliament, to Members of the Committee
 - b) perform its responsibilities and interact with the written email submissions not made available to Members of the Committee
 - c) invite and meet with the authors of the High Level Panel Report and interact with the findings and recommendations captured in the HLPR.



d) invite and interact with the Surveyor General

Should the Committee not agree to the above, our recommendation is as follows-

- 4.2 That the Constitution, in its current form, provides all the powers required to ensure the full realization of just and equitable land reform; and no rational reason exists to amend the provisions of section 25 of the Constitution.
- 4.3 That the findings and recommendations of the High Level Panel in respect of land reform be accepted and adopted.