**Economic Freedom Fighters Report on the Review and Amendment of Section 25 of the Constitution**

**Background:**

1. The EFF tabled a motion for the review and amendment of Section 25 of the Constitution to allow for expropriation of land without compensation in February 2018.
2. The motion instructed the Constitutional Review Committee to conduct nationwide public hearings, and:
3. Review and amend Section 25 of the Constitution to make it possible for the State to expropriate land in the public interest without compensation.
4. Propose the necessary constitutional amendments with regards to the kind of future land tenure regime needed, taking into account the necessity of the State being a custodian of all South African land.
5. The Constitutional Review Committee has engaged thousands of South Africans through nationwide oral hearings, through written submissions, and through parliament oral hearings from over 60 experts and practitioners from the land, agriculture, banking sectors, as well as civil society organisations.
6. From these public hearings, we made the following observations

**Observations:**

1. Hunger for land across the country is palpable amongst the dispossessed Africans, and that the current nature of the land reform programme has done very little to redress inequalities in land ownership.
2. Land is not merely seen as a productive resource, attached to it are deep feelings of identity and nationhood, and a deep longing for restoration of lost rights to land.
3. There was a strong feeling that the restoration of land to Africans in particular is a necessary requisite for complete decolonisation of the country.
4. To this effect, many of those who participated in the nationwide oral hearings were adamant that the Constitution in its current from does not appreciate the deleterious effects of dispossession, and that it draws a moral equivalence between the interests of the dispossessed and the interests of the dispossessor.
5. There was a strong sentiment that the negative wording of Section 25 (1) precludes the imperative of restorative justice, which must be at the centre of land reform, and protects private property rights to the detriment of the commitment to land reform.
6. It was also argued that although Section 25 (2) allows for expropriation of property, Section 25 (2) (b) is explicit that this must be subject to compensation, which must be agreed upon by those involved, or decided by a court of law.
7. Most of those who participated in the hearings argued that the provisions of Section 25 (2) (b) will practically hand over the land reform programme to the courts, and provides for a litigations based land reform, likely to benefit those who currently own property.
8. It was further argued that Section 25 (3) provides for compensation which must be just and equitable, taking into account a number of factors in determining what would be just and equitable.
9. Others argued that a progressive interpretation of this Section may lead to instances where compensation would equal to zero. Others argued that this is a hypothetical argument, and a very unlikely one, taking into account the litigation that will have to be involved.
10. Those who argued that the Constitution may provide for expropriation without compensation, and that it must be left unchanged, were not clear why they would be opposed to a clarificatory amendment, at the basic minimum.
11. In rural provinces, there was a strong putsch by traditional leaders who claimed that expropriation of land must not affect land under their administration.
12. This is also related to the nature of future land administration required. There were conflicting views about whether people must be given title deeds, or whether the State should be the custodian of all land in South Africa.
13. Issues relating to the capacity of the State, its inherently corrupt nature in the way the State is currently constituted, and the potential abuse of power by unscrupulous State officials.
14. There was also a strong view that private ownership of land cements inequality, it allows those who have power and resources to accumulate as much land as possible in as few hands.

**Recommendations:**

1. The EFF therefore recommends that Section 25 of the Constitution must be amended to allow expropriation of without compensation. This should be done before the end of the 5th Democratic Parliamentary Term.
2. The amendments must reflect the following:
3. Land, water and other natural resources belong to the people of South Africa as a whole, and for this purpose, all land and other natural resources are vested on the State on behalf of the people.
4. All land in private ownership is henceforth expropriated without compensation and placed under the custodianship of the State.
5. The State must take legislative and other mechanisms to make land accessible to everyone on a just and equitable basis, taking into account the need for redressing racial imbalances to land holding.
6. d) When redistributed to people, the state must make sure that no one is charged rental fees for the land, but given land user rights, which can be inherited.
7. The State must take legislative mechanisms to record rights to land of everyone, and protect these rights.
8. A Land Redistribution Bill must be enacted quickly, and the Bill must establish an independent State Land Management Agency which will be given the responsibility to manage the land on behalf of the people, set land ownership ceiling per recipient and family members, redistribute rights to land on an equitable basis to all.
9. A separate and independent Land Ombudsman must be established to manage and intervene when person’s rights are violated by the State.
10. The Constitutional Review Committee must introduce a Section 74 Constitutional Amendment Bill to give effect to amend the Constitution before the end of the 4th quarter of 2018 Parliamentary term.
11. A separate agrarian reform and protection bill must be emanated to promote, and protect small scale farmers and clearly enact the State’s obligation to procure agricultural products from small scale farmers.
12. In the immediate, a moratorium should be placed on huge commercial land purchases and sale.