**Expropriating the Rule of Law without Due Process.**

**Submission by Dr C.P. Mulder MP on behalf of the Freedom Front Plus to the Constitutional Review Committee of Parliament on our observations and recommendations regarding the “process” and substance to amend the Constitution to make provision for Expropriation without Compensation or not.**

**A. Introduction**

The Freedom Front Plus is of the view that the current process followed by the Constitutional Review Committee is fundamentally flawed. We are further of the view that the CRC under the Chairpersons ship of its two ANC MP’S with the support ANC members in the Committee are prepared to present to Parliament a report and process that will embarrass Parliament and the President. In this process they are enthusiastically aided and abetted by the EFF and the UDM. The FF Plus only takes part in this final process because it became clear that the abovementioned parties are prepared to present to the House and the South African public a flawed process and report regardless of the truth.

Our observations and recommendations are made under protest and should not be viewed as trying to rectify or to give credibility to this flawed process.

**If you want to change the constitution, or an entrenched section of the constitution or the Bill of Rights, you cannot make a single procedural error. Not one. In this process many errors were made and are still being made.**

The FF Plus reserves all of its rights with regard to this draft report, and the making of recommendations under these circumstances should not be construed under any circumstances as approval or consent of the errors in procedure that have been wilfully committed by the Committee and some of its members, even after they were warned on more than one occasion.

**B. Background**

On Tuesday, 27 February 2018, the National Assembly adopted the following motion:

That the House –

(1) notes that South Africa has a unique history of brutal dispossession of land from black people by the settler colonial white minority;

(2) further notes that land dispossession left an indelible mark on the social, political and economic landscape of the country and has helped design a society based on exploitation of black people and sustenance of white domination;

(3) acknowledges that the African majority was confined to only 13% of the land in South Africa, while white people owned 87% of the land at the end of the apartheid regime in 1994;

(4) further acknowledges that the current land reform programme has been fraught with difficulties since its inception in 1994 and that the pace of land reform has been slow with only 8% of the land transferred back to black people since 1994;

(5) acknowledges that the recent land audit report claims that black people own less than 2% of rural land and less than 7% of urban land;

(6) recognises that the current policy instruments, including the willing buyer willing seller policy, and other provisions of section 25 of the Constitution may be hindering effective land reform;

(7) notes that in his State of the Nation Address, President Cyril Ramapo’s, in recognizing the original sin of land dispossession, made a commitment that the government would continue the land reform programme that entails expropriation of land without

compensation, making use of all mechanisms at the disposal of the State, implemented in a manner that increases agricultural production, improves food security and ensures that the land is returned to those from whom it was taken under colonialism and

apartheid and undertake a process of consultation to determine the modalities of the governing party resolution;

(8) further notes that any amendment to the Constitution to allow for land expropriation without compensation must go through a parliamentary process as Parliament is the only institution that can amend the Constitution; and

(9) with the concurrence of the National Council of Provinces, instructs the Constitutional Review Committee to –

(a) review section 25 of the Constitution and other clauses where necessary to make it possible for the state to expropriate land in the public interest without compensation and **in the process conduct public hearings to get the views of ordinary South Africans, policy-makers, civil society organisations and academics, about the necessity of, and mechanisms for expropriating land without compensation;**

(b) propose the necessary constitutional amendments where applicable with regard to the kind of future land tenure regime needed;

(c) report to the Assembly by no later than 30 August 2018 [[1]](#footnote-1).

As a policy-maker, the Freedom Front Plus made submission in terms of clause (9)(a) of the motion, which determines that the Constitutional Review Committee must conduct public hearings to get the views of ordinary South Africans, policy-makers, civil society organisations and academics, about the necessity of, and mechanisms for expropriating land without compensation.

**C. Process**

1. Public hearings in Provinces:

A total of 33 meetings were held. It is common cause that the majority of speakers at these meetings were in favour of amending section 25 of the constitution. On average 75 people spoke per meeting. However not all of them were in favour of amending section 25. It is also common cause that many more people attended these meetings. If one is generous and accepts for the sake of this argument that on average a 1000 people attended these meetings per meeting, and that all of them were in favour of amending section 25 of the constitution, then we still end up with a figure of **33 000 people who were in favour of amending section 25 of the constitution.**

2. Written submissions:

On 14 March 2018 during Questions to the President in the National Assembly, Pres Ramaphosa appealed to the public to interact with this process. He called on everyone to make submissions just as were done during the writing of the constitution process. The public heard what he said and actively participated in this process.

On 24 June 2018 the Spokesperson of Parliament, Moloto Mothapo told African News Agency the following: “The CRC is in the process of contracting a service provider to increase the capacity of the CRC with the aim to analyse the submissions to ensure that each and every submission would be considered…even submissions with only a name, cell phone number or email address shall be considered.”

The actual process in fact was nothing but this. The CRC did not appoint the service provider. Somewhere someone else did that on behalf of the CRC. This service provider was later unceremoniously relieved of their duties and even asked to rather leave the meeting. Parliament was then asked to take charge of the process and rightly so.

Not one single written submission was addressed to any of the political parties or any member of the CRC. They were all addressed to Parliament. The Chairpersons of the CRC tried to shirk their responsibility by expecting political parties to do Parliaments work.

Until today no report that deals with the written submissions were presented to the CRC. More than 200 000 emails are somewhere in cyber space and were never made available to the members of the CRC. No report that deals with the written submissions were ever adopted or even discussed by the CRC. All we can do is to work with some of the statistics of the original service providers who were relieved of their duties because they could not do the job.

**The figures indicate the following:**

* **630 609 written submissions were allegedly received.**
* **472 344 said – No do not change the constitution – (74.9%)**
* **153 849 said – Yes change the constitution – (24.3%)**
* **4 416 – were undecided – (0.7%)**

It is absolutely clear that the vast majority (75%) or 472 344 people expressed a clear NO to the amending of the constitution.

3. Oral hearings at Parliament

While the provincial hearings as well as the written submissions mainly dealt with the views of ordinary South Africans, the oral hearings in Parliament gave an opportunity to **policy-makers, civil society organisations and academics.**

The CRC spent 6 full days to deal with all the oral submissions. A total of 53 submissions by policy-makers, civil society organisations and academics were entertained.

The following said NO to an amendment of Section 25 of the constitution:

**NO:**

1. Agri Business

2. Graan SA

3. Alliance for Rural Development

4. Prof Elmien du Plessis – Law Faculty NWU

5. Land Accountability and Research Centre – Dr Aninka Claassens – Univ Cape Town

6. Department of Public Law – University Stellenbosch – Prof B.V. Slade

7. Phuhlisani NPC – Dr Richard Satge

8. PLAAS – Poverty, Land and Agrarian Studies – University Western Cape –
 Prof Ruth Hall

9. COSATU

10. Hope of Glory Tabernacle Church

11. AgriSA – Dr Annelize Crosby

12. In Transformation Initiative – Dr Mohammed Babha

13. South African Institute of Race Relations

14. SA Institute of Black Property Practioners (SAIBPP)

15. Apostolic Faith Mission (AFM) – Dr Weideman

16. Orania Bewegeing – Carel Boshoff

17. Afrikanerbond – Jaco Schoeman – Pieter Vorster – Jan Bosman

18. Indigenous First Nation Advocacy South Africa (IFNASA) – Anthony Williams

19. Every Nation Churches – Mr Denis Neville

20. Chidi Attorneys – Mr Matome Chidi

21. South African Human Rights Commission – (SAHRC)

22. Helen Suzman Foundation

23. National House of Traditional Leaders

24. South African Catholic Bishops Conference – Adv Mike Pothier

25. Afriforum – Ernst Roets

26. Witzenberg PALS

27. Banking Association South Africa (BASA) – Cas Coovadia

28. Bussiness Unity South Africa (BUSA) Ms Tanya Cohen

29. NEDBANK – Mr Mike Brown CEO

30. John Langalibalele Dube Institute (JLD) – Dr T Ngcobo

31. Sake Liga – Mnr Piet le Roux – Prof Koos Malan

32. Vumelana Advisary – Mr Peter Setou

33. Legal Resource Centre – Mr Sheldon Magardie

34.Suyidwes Landbou Eiendoms Beperk – Mr Derek Linde

35. Woman on Farms – Ms Carmen Louw

36. Mr K Molema

37. FW de Klerk Foundation – Dr Theuns Eloff

38. AFRA –

39. Johannesburg Attorneys Association –

40. Centre for Development and Enterprise – Ms Ann Bernstein

41. Mr Musto

The following said YES to an amendment of Section 25 of the constitution:

**YES**:

1. National African Farmers UNION (NAFU) Mr Motsepe Matlala

2. Black Lawyers Association – Mr Bayethe Maswazi

3. National Association of Democratic Lawyers (NADEL)

4. Black First Land First (BLF) – Andile Mngxitama

5. Dr Marc Wegerif (Human Economy Programme) Univ Pretoria

6. Foundation of Human Rights (**Funded by Dept of Justice**)

7. Limpopo Communal Institute – Mr LB Mabuela

8. AFASA – Dr Mahlati

9. Tshwane Inner City Arts & Cultural Heritage Forum – Mr Sindiso Solontsi

10. AZAPO – Mr Strike Thokoane

11. Mr Zinasele Kani

**Uncertain – YES and NO**

1. Landless Movement of South Africa - LAMOSA

**Total oral submissions = 53**

**NO 41 = 77.3 %**

**Yes 11 = 20.7%**

**Yes and No = 1 = 1.8%**

**Once again it is quite clear that more than 77% of policy-makers, civil society organisations and academics** who gave evidence in front of the CRC were opposed to the amendment of section 25 of the constitution.

**D. Background on Land Reform**

When the African National Congress (ANC) came into power in 1994, it embarked on the process of land reform in accordance with its land policy. It established the Department of Land Affairs which is now known as the Department of Rural Development and Land Reform (DRDLR) after its name was changed at different stages.

According to the DRDLR Annual Performance Plan 2018/2019, there are two main programmes, namely programme 4: land restitution and programme 5: land reform[[2]](#footnote-2).

The purpose of programme 4: land restitution is to settle and finalise land restitution claims under the Restitution of Land Rights Act (Act 22 of 1994). The purpose of programme 5: land reform is to initiate sustainable land reform programmes in South Africa.

According to its long title, the aim of the Restitution of Land Rights Act (Act 22 of 1994) is: To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith. [Long title substituted by s. 31 of Act 63/97][[3]](#footnote-3). This Act gives effect to section 25 (7) of the Constitution of the Republic of South Africa (Act 109 of 1996) that states: “(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.”

Government has over time set various targets for land reform. The Reconstruction and Development Programme (RDP) document, for example, had set the target that 30% of the land must be transferred to Previously Disadvantaged Individuals (PDIs) by 2014. The National Development Plan (NDP) set the target that 20% of the commercial agricultural land per district must be transferred by 2030.

**Government’s progress with land reform**

The setting of these targets created certain expectations. At the same time, there was no way to measure whether these targets were being met as the DRDLR did not conduct a comprehensive land audit.

Different stakeholders hold different views on the real progress of land reform. The abovementioned motion adopted by the National Assembly states in clause (3) that the African majority was confined to only 13% of the land in South Africa, while white people owned 87% of the land at the end of 1994; clause (4) further acknowledges that the current land reform programme has been fraught with difficulties since its inception in 1994 and that the pace of land reform has been slow with only 8% of the land transferred back to black people since 1994; and clause (5) acknowledges that the recent land audit report claims that black people own less than 2% of rural land and less than 7% of urban land.

The DRDLR only completed its land audit report in 2017 under the title: *Land Audit Report – Phase II: Private land ownership by race, gender and nationality* [[4]](#footnote-4). The problem description of the audit report states that “since the dawn of democracy in South Africa, no official information has been published on land ownership according to race, gender and nationality. There is need to show who owns South African land and to track the progress of land reform to fulfil section 25(5) of the Constitution objectives to enable South African citizens access to land on an equitable racial and gender basis.”

The executive summary of the DRDLR audit report states that: “The Land Audit reveals that Whites own 26 663 144 ha or 72% of the total 37 031 283 ha farms and agricultural holdings by individual landowners; followed by Coloured at 5 371 383 ha or 15%, Indians at 2 031 790 ha or 5%, Africans at 1 314 873 ha or 4%, other at 1 271 562 ha or 3%, and co-owners at 425 537 ha or 1%.”

The DRDLR admits that in its data collection for the above statistics, it mainly considered the surnames of individuals. It stated that records of the Deeds Registration (DRS) and Department of Home Affairs (DHA), amongst others, indicate names, identity numbers and surnames – but not race. It, therefore, relied only on Stats SA for race identification.

Another land audit was conducted by ADS, Landbouweekblad and Agri SA under the title: *Land Audit: A Transactions Approach – November 2017*.

The executive summary of the report states the following:

“The focus of this study was on agricultural land. Evaluating the ownership of agricultural land requires a multi-pronged approach. It is not merely a question of ownership in terms of land size (hectares), but rather a combination of land size, value, land potential and other factors. Comparing 1994 and 2016, it is evident that the amount of agricultural land has decreased from approximately 79.3% in 1994 to 76.3% in 2016. Accordingly, this forms part of the broader perspective with which the ownership of agricultural land should be evaluated.

When considering ownership by Previously Disadvantaged Individuals (PDIs), in terms of the land’s value and the land’s potential, the ownership share increased significantly. On a national level: in terms of value, the share is 29,1% and in terms of land potential, the share is 46,5%. These statistics compare favourably against an ownership share of only 14.9% in 1994 (based on land size in hectares).” [[5]](#footnote-5)

The report’s summary reads as follows:

“Unfortunately, up to now, there has been a relative absence of statistics to inform the land policy debate.

As a starting point, the amount of South African agricultural land is a crucial consideration for land policy. The amount of farmland has decreased from approximately 79.3% in 1994 to 76.3% in 2016. This reduction can be linked to the expansion of urban areas, conservation areas, forestry and mining. This is worrying, particularly when viewed in the context of an increasing population and urbanisation. Fewer farmers on less land need to feed a very large urban population. When considering farm ownership by PDIs, it must be in terms of the size of agricultural land relative to all other land.

Our analyses show that the market is quite effective in changing land ownership patterns. From the 1994 to 2016 transactional data, a total of 8,9 million ha was bought by PDIs and Government at a total value of R90,3 billion. The 8,9 million ha equates to 12.9% of the total hectares that were traded. The R90,3 billion equates to 22,5% of the total value of land traded over the 1994-2016 period.

Government purchased a total of 2,8 million ha at R20.5 billion. The 2,8 million ha represents 31.9% and the R20.5 billion represents 22.7% of the land bought by PDIs and Government. Note that this includes agricultural land as well as land bought for urban development.

Considering the differences in the land potential between land located in different areas, ownership shares of PDIs and Government need to consider broader measures than the hectare land size alone.”

The abovementioned audit reports are the only reports of significance on the land issue in South Africa. It is important to note that there is no clarity on who owns what percentage of what type of land in South Africa based on race. In their recommendations, both the reports call for a proper land audit to provide clarity on land reform in South Africa and to formulate a clear strategy for a land redistribution plan.

The figures used in the motion[[6]](#footnote-6) to substantiate the motion is, therefore, flawed and inaccurate.

**E. Land reform and politics**

Clause (6) of the motion[[7]](#footnote-7) states: The House recognises that the current policy instruments, including the willing buyer willing seller policy, and other provisions of section 25 of the Constitution may be hindering effective land reform.

The motion does not specify what is meant by the “current policy instruments” and then it refers to the “willing buyer willing seller policy” as possibly hindering effective land reform. Consequently, the motion instructs the Constitutional Review Committee in clause (9)(a) to review section 25 of the Constitution to make it possible for the state to expropriate land in the public interest without compensation.

The main argument of the motion is that current policy instruments (that are not specified) and the willing buyer willing seller policy are hindering effective land reform and that expropriation without compensation is needed to ensure effective land reform.

This gives rise to the following two questions: (i) is there sufficient land available for land reform, and (ii) is expropriation without compensation really necessary to obtain land for land reform?

Some politicians justify expropriation without compensation by arguing that land owners do not want to make land available for land reform or that they want compensation that is inflated and thus not affordable.

In the foreword of the 2012/2013 annual report of the Commission on Restitution of Land Rights, the Minister for Rural Development and Land reform, Mr Nkwinti, states: “The introduction of the Restitution Programme in 1995 has contributed to correcting the skewed patterns of ownership of land through awards of 3 million hectares of land, 1.5 million of which have been transferred to persons and communities who qualified for restitution and opted for land restoration**. A total of 77 334 claims have been settled to date. Of these, 71 292 claims were settled by payment of financial compensation of R6 561 021 691 to claimants.”**

According to the Minister, **92.2% of the beneficiaries preferred financial compensation and not the land.**

In the foreword of the 2015/2016 annual report of the Commission on Restitution of Land Rights, the Minister for Rural Development and Land Reform, Mr Nkwinti, states: “Of all the land claims that have been settled until 31 March 2016, the vast majority of claimants have opted for restitution in the form of financial compensation. **This trend is likely to continue as 94% of claimants of the 143 720 new claims** that have been lodged since the re-opening of lodgement of new claims **have indicated a preference for their claims being settled through payment of financial compensation.”**

In effect, the beneficiaries’ preference for financial compensation is the cause for inflated land prices and not land owners. This is confirmed by the annual reports of the Commission on Restitution of Land Rights and is illustrated by the following data from the annual reports on settled restitution claims.

The data reveals that an amount was paid for the land in hectares (Land cost) and then an additional amount was paid to beneficiaries who did not want the land, but preferred financial compensation (Financial compensation and Grants).

Settled restitution claims:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Annual report | Hectares | Land cost | Financial Compensation | Grants | Total awarded |
| 2012/2013 | 195 967 | 1 575 958 047  | 993 145 949 | 3 492 300 | 2 572 596 297 |
| 2013/2014 | 68 838 | 1 578 806 320 | 478 164 009 |  | 2 056 970 329 |
| 2014/2015 | 144 406 | 1 777 514 536 | 1 000 691 810 |  | 2 778 206 347 |

Source: Annual reports from the Commission on Restitution of Land Rights

The beneficiaries’ preference for financial compensation in 2012/2013 inflated the land cost with R 996 638 249 or 63,24%. In 2013/2014, the land cost was inflated with R 478 164 009 or 30,28% and in 2014/2015 with R 1 000 691 810 or 56,29%.

From this data, it is clear that it is not the land owners who inflate land prices.

The *Land Audit: A Transactions Approach – November 2017* report found that twice as much land was transferred to black entrepreneurs and farmers through ordinary commercial purchases than what the state had managed to buy for black owners as part of its land redistribution programme.

The answer to the two questions above is that there is sufficient land available for land reform, the land owners do not inflate the land cost and the willing buyer willing seller policy is not hindering effective land reform. **The motion calling for the amendment of section 25 of the Constitution to provide for expropriation without compensation is, therefore, without any substance.**

The ANC and its government have created a narrative that portrays white farmers as having stolen the land that rightfully belongs to the indigenous people of this country. Although these farmers benefited from the apartheid system, it is disingenuous to attribute the 1913 Land Act to them; they were not yet born. Additionally, the government’s own poor public policy and corruption are contributing to poverty in South Africa. It is unfair to blame white farmers for the mismanagement of the land restitution programme; the poor project management within the government is to blame. Most of the land that was obtained by black farmers through the land restitution and redistribution process is now commercially unproductive. Furthermore, the government also failed to develop and implement a Local Economic Development (LED) framework to assist traditional communities in utilising the land commercially.

**F: Consequences of land expropriation without compensation**

Amending section 25 of the Constitution to provide for expropriation of land without compensation will make all property rights null and void. The erosion of property rights in South Africa will create uncertainty, which will inevitably divert potential investment away from the country's agricultural sector and will ultimately result in economic failure for South Africa.

The mere fact that the motion was adopted has already had a detrimental effect on economic growth in South Africa.

* **International Bill of Human Rights and International Treaties entered into by South Africa and the effect that expropriation without compensation will have on our image internationally:**

Article 17 of the Universal Declaration of Human Rights, as contained in the International Bill of Human Rights of the United Nations, states that: “1. Everyone has the right to own property alone as well as in association with others, and 2. No one shall be arbitrarily deprived of his property.”

The implementation of land expropriation without compensation is in contravention of the International Bill of Rights. It is also in conflict with about a dozen treaties that South Africa has signed and ratified. As such, it is not a principle that is enshrined in South African domestic law. One can, therefore, not just amend the Constitution so as to make it legal – treaty law is superior, it always applies. What is, however, of much greater concern is what effect this will have on South Africa’s access to the international markets. By amending the Constitution to allow for expropriation without compensation, South Africa will send the message that property rights are insecure. As a result, international investments in South Africa will decrease and that will, in turn, hamper economic growth, which is vital for creating jobs in South Africa.

 **1. RSA Constitution**

 **1.1 Section 39(1)(b):** When interpreting the Bill of Rights, a court, tribunal, or forum **must** consider international law.

**2. International Law – Protection of citizens from EWC**

 **2.1 Customary Law:**

2.1.1 **Democratic Republic of Congo v Rwanda 2006 International Court of Justice):** The prohibition of racial discrimination and genocide are international peremptory norms (jus cogens) that no state may deviate from, irrespective of their local constitutions and laws.

**2.2 Treaty Law:**

2.2.1 **Universal Declaration of Human Rights:** Guiding in nature – Section 17

 (1) Everyone has the right to own property alone as well as in association with others.

 (2) No one shall be arbitrarily deprived of his property.

**3. USA – AFRICAN Growth and Opportunity Act (AGOA):**

 **3.1** The African Growth and Opportunity Act (AGOA) IS A United States Trade Act, enacted on 18 May 2000 as Public Law 106 of the 200th Congress. AGOA has since been renewed to 2025. The legislation significantly enhances market access to the US for qualifying Sub-Saharan (SSA) countries. Qualification for AGOA preferences is based on a set of conditions contained in the AGOA legislation. In order to qualify and remain eligible for AGOA, each country must be working to improve its rule of law, human rights, and respect for core labour standards. While the eligibility requirements are set out in the legislation, it is the United States which determines, annually, whether countries have met the published eligibility requirements. Beneficiary status may therefore be granted, or withdrawn, at the discretion of the US President (<https://agoa.info/>).

 **3.2** Under the Obama-administration the RSA was on the verge to be disqualified from AGOA based on trade disputes regarding poultry.

 3**.3 Applicable requirements to access and remain in AGOA – Section 104 of AGOA:**

 **(A) THE PRESIDENT IS AUTHORIZED TO DESIGNATE A SUB-SAHARAN AFRICAN COUNTRY AS AN ELIGIBLE SUB-SAHARAN COUNTRY IF THE PRESIDENT DETERMINES THAT THE COUNTRY**

(1) (A country that) has established, or is making continual progress toward establishing—

(A) **a market-based economy that protects private property rights,** incorporates an open rules-based trading system, and minimises government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

**(B) ONGOING COMPLIANCE:**

If the President determines that an eligible Sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1), the President shall terminate the designation of the country made pursuant to subsection (a).

* **Expected influence on availability of credit to the agricultural sector:**

Farming in South Africa is highly capital intensive. Farmers rely on banks to lend them money to not only buy their farms, but also to have essential working capital. Without these loans, farmers cannot purchase seed, fertiliser, feed or implements and will consequently be unable to produce. This may put South Africa at risk of food shortages, price increases and even food-related riots and social instability. What will happen to the banks if the land is expropriated without compensation? The answer is that their bad debt will increase sharply and ultimately, they will collapse. The agricultural sector in South Africa owes approximately R170 billion to banks and credit providers. If the banks collapse, it would mean that no one will be able to provide the essential working capital for farmers, this will lead to the collapse of the agricultural sector, endangering food security and making famine a very real possibility.

* **Expected influence on job creation and economic growth:**

South Africa does not have a lot of fertile land for agriculture and thus requires the application of highly technical and modern technology. South Africa has an unemployment rate of 27% and a youth unemployment rate of 50%. Agriculture is a major provider of employment in South Africa and if the sector is jeopardised, it will result in major job losses.

The proposed land expropriation without compensation has already caused great damage by deterring foreign direct investments. Of course, local investments will also be negatively affected as farmers and banks will largely suspend investments in the agricultural sector due to policy uncertainty and if the proposed amendment goes through, financial institutions will stop lending capital to the agricultural sector on the whole.

According to the Fourth Quarter 2017 Gross domestic product report by StatsSA the agricultural industry contributed 0,4% to the overall growth of 1,3% GDP in 2017. The industry itself grew by 17,7%.

During the first quarter of 2018 the industry however contracted by 24,2% (GDP First Quarter 2018 report, StatsSA) and contributed to a decline in GDP of 0,7%.

This is mainly due to a drop in production of field crops, seen after the motion with regards to expropriation without compensation was passed.

This is undisputable proof of the effect this principle will have on the economy of South African by creating material uncertainty in the agricultural sector which will lead to joblosses, food insecurity and poverty.

**G. Conclusion:**

 1. The written submissions as well as the oral submissions make it abundantly clear with a 75% plus majority that there are no grounds whatsoever to argue that the evidence put in front of the Constitutional Review Committee necessitates an amendment of the constitution of South Africa. On the contrary.

2. If the ANC/EFF majority goes ahead and recommend to Parliament that section 25 of the constitution should be changed it can only be argued on the basis of the pronouncement by Pres Ramaphosa on 31 July 2018 when he said “**Accordingly, the ANC will, through the parliamentary process, finalise a proposed amendment to the Constitution that outlines more clearly the conditions under which expropriation of land without compensation can be effected**.” This was said AND DECIDED while the CRC was still in the process of provincial hearings and even before a single oral submission was listened to by the CRC. Up to today (12 Nov 2018) no deliberations have taken place but the decision of the ANC and government was already announced on 31 July 2018.

3. The South African public and the international community should take note that the process was a charade and therefore fundamentally flawed. The decision to amend section 25 was taken by the NEC of the ANC and announced by Pres Ramaphosa already on 31 July 2018.

**F. FF Plus recommendations to enhance orderly land reform**

**The Freedom Front Plus believes that expropriation without compensation is totally unacceptable and that the following offers a solution to the land issue:**

1. We call for a proper land audit to provide clarity on land reform in South Africa and to formulate a clear strategy for a land redistribution plan.
2. The premise should be that the land was not stolen and that the legal owners have right of ownership.
3. In article 17, the United Nations’ Universal Declaration of Human Rights recognises private ownership of property and it prohibits expropriation without compensation and it must be complied with.
4. The principle of “willing buyer willing seller” must be applied in the land reform process.
5. The state must make the more than 4 000 farms currently in its possession, which it obtained through land reform, available to black farmers along with the relevant title deeds.
6. State-owned land (17 million ha) must also be made available and used for land reform.
7. Politicians must immediately stop making ideological and populist statements about land and must stop falsely accusing white farmers in particular.
8. Corrupt officials must be dismissed at once and competent officials who will be able to effectively, professionally and quickly finalise the administration of land reform, must be appointed.
9. Land reform must not be ideologically driven, it must be production driven to ensure food security. When land is allocated, it must be ensured that the new owners have the skills to continue with production. South Africa cannot afford to have once productive farms go under within a year or two and become unproductive.
10. The Constitution and specifically section 25 should not be amended.

**12 November 2018**

1. Minutes of proceedings of National Assembly, Tuesday, 27 February 2018. Minutes: National assembly No 3 - 2018 [↑](#footnote-ref-1)
2. DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM | ANNUAL PERFORMANCE PLAN 2018/19 [↑](#footnote-ref-2)
3. RESTITUTION OF LAND RIGHTS ACT 22 OF 1994 (Afrikaans text signed by the President) [Assented To: 17 November 1994] [Commencement Date: 2 December 1994] as amended. [↑](#footnote-ref-3)
4. November 2017 – Version 2 [↑](#footnote-ref-4)
5. Land Audit: A Transactions Approach – November 2017. [↑](#footnote-ref-5)
6. Minutes of proceedings of National Assembly, Tuesday, 27 February 2018. Minutes: National assembly No 3 – 2018 [↑](#footnote-ref-6)
7. Minutes of proceedings of National Assembly, Tuesday, 27 February 2018. Minutes: National assembly No 3 – 2018 [↑](#footnote-ref-7)