



PARLIAMENT
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LEGAL OPINION

[Confidential]

TO : Honourable SP Holomisa, MP
: Honourable BA Mnguni, MP
: Co-Chairpersons of the Joint Constitutional
Review Committee

COPY : Secretary to Parliament

DATE : 4 August 2011

SUBJECT : Submission by electronic mail on the proposed
amendment of sections 25 and 86 of the
Constitution

LEGAL ADVISER : Mr N Vanara

COMMITTEE REFERENCE : 7/11

REFERENCE NUMBER : 131 / 11



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1. Our Office was requested to advise on a submission from constitution@parliament.gov.za and constitution@parliament.gov.za on the proposed amendment of sections 25 and 86 of the Constitution.
 2. The submission proposes the deletion of section 25 of the Constitution and the new section 25 to read as follows:
 - 2.1 The freehold of all land in the Republic to belong to the State. Those who hold freehold land shall have their freehold converted into a leasehold agreement;
 - 2.2 The notion that only land dispossessed after 19 June 1913 must be eliminated and indeed all land acquired at any time during colonialism must now be put to rest;
 - 2.3 Although the idea of property is not confined to land, other national assets must be brought into the public sector;

2.4 Parliament must enact the legislation referred to in subsection (a).

3. The proposed amendment is not motivated. However it is apparent the submitters are unhappy with the policy position that informed the formulation of the current property right clause.
4. In our view the submission requires a policy decision by the Committee on the issues raised.
5. The submission also proposes an amendment of section 86 of the Constitution to read the following:

5.1 The President will be elected by the direct vote of the electorate. If the winning candidate in this election does not obtain over 50% of the votes cast, then there must be a re-run between the top two candidates.

5.2 In the event of a vacancy in the office of the President, the Chief [Justice] must call for another Presidential election within 30 days of the vacancy occurring.

6. The submission proposes a departure from the election of the President by members of the National Assembly to a system where the President is directly elected by the electorate.
7. In our view the changing of the President's election system is a policy matter requiring a decision by the Committee.



Mr N Vanara

Senior Parliamentary Legal Adviser

**Ms Pat Jayiya
Committee Section
Constitutional Review Committee**

From [REDACTED]
And [REDACTED]

(FAX 0 [REDACTED])

RECOMMENDED CHANGES TO THE CONSTITUTION

The following changes in the Constitution are hereby recommended:

- 1) Chapter 2 subsection 25 (Property) of the Bill of Rights to be scrapped and replaced by the following proposals:
 - a) The freehold of all land in the Republic to belong to the State. Those who hold freehold land shall have their freehold converted into a leasehold agreement.
 - b) The notion that only land dispossessed after 19 June 1913 must be eliminated and indeed all land acquired at any time during colonialism must now be put to rest.
 - c) Although the idea of property is not confined to land, other national assets must be brought into the public sector.
 - d) Parliament must enact the legislation referred to in subsection (a).

- 2) Chapter 5 (The President and National Executive)
Section 86(The Election of President). This Section to be scrapped and replaced by the following:
 - a) The President will be elected by the direct vote of the electorate. If the winning candidate in this election does not obtain over 50% of the votes cast, then there must be a re-run between the top two candidates.
 - b) In the event of a vacancy in the office of the President, the Chief must call for another Presidential election within 30 days of the vacancy occurring.