

Strong arguments will trump numbers in land debate

**Article courtesy of the Parliamentary Monitoring Group*

Vincent Smith, chairperson of the Parliamentary Committee that will review the "property clause", Section 25 of the Constitution, spoke about the role of the committee and the public hearings:

"I want the public to answer the question as to whether the Constitution, Section 25, is an impediment to the land reform programme. If it is indeed an impediment, what changes do they desire.

We also want to hear from the other side of the spectrum, from those who argue the Constitution in its current form is not an impediment. I am referring here specifically to Section 25(8) and for them to argue why they believe Section 25 is not an impediment. We really want South Africans to have an opportunity to express themselves because both sides seem to think that they have strong arguments. The committee would then, on the basis of the arguments presented, make a recommendation to Parliament.

I want to say to South Africans that this is not a referendum so it doesn't matter how many say yes or how many say no. It's not about numbers – it's about the strength of the argument.

We want all South Africans to (1) feel free to come and give their view and (2) for South Africans to be tolerant enough to allow those who have different views, to air their views. I would hate to see a situation where people are shouted down or physically harassed because they might have a different view to yours or mine.

We have to approach the hearings clearly open-minded as Parliament does not have a view one way or the other – it is as far away from the truth as can be to say that Parliament has already decided and we must desist from doing so because there is no pre-cooked decision in Parliament."

Reviewing Section 25: Important facts

Based on a parliamentary motion of the EFF calling for expropriation of land without compensation, the Ad Hoc Constitutional Review Committee has been tasked with:

- (a) reviewing 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, policymakers, 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 regards to the kind of future land tenure regime needed; and
- (c) report to the Assembly by no later than 30 August 2018.

Section 25 of the Constitution deals with property and is often called the "property clause". Section 25 states that property may be expropriated only for "a public purpose or in the public interest" and "subject to compensation" – the amount of which, and the time and manner of payment, must either have been agreed to by those affected, or decided by a court.

This will be the first time a substantive, rather than a technical amendment could be made to our highest law and the first time the Bill of Rights might be amended. The Constitution already makes expropriation of land without compensation possible if it is "just and equitable" reflecting a balance between the public interest and the interests of the landowner– the litmus test is what is just and equitable in a given case, according to Prof Ruth Hall. What the amendment seeks to do is remove the "subject to compensation" bit. But what the government has never done, is develop a land-reform policy that considers "just and equitable compensation" from any standpoint other than the "willing buyer, willing seller" principle.

Presently, the "property clause" applies to all forms of property – commercial farmland, residential homes, informal land rights and property other than land, including stocks and bonds, pensions, intellectual property and other assets. Whether expropriation without compensation covers all these forms, will have to be addressed by the committee.

The committee will consider the public submissions on the amendment of Section 25 and hold public hearings. The committee has to report back to the National Assembly on this work by 30 August 2018.

To amend the Constitution, two-thirds of the National Assembly must vote for a proposed amendment and, in the National Council of Provinces, six of the nine provinces must be for the proposed amendment.

This means 267 of the National Assembly's members must vote for the proposed amendment. The ANC currently has 249 MPs and the EFF 25.