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## **IMPRESSIONS OF THE (FIRST) DIALOGUE ON PROPERTY, LAND REFORM AND SECTION 25**

*By Theuns Eloff: Executive Director, FW de Klerk Foundation*

The National Forum for Dialogue on Land Reform, held at the end of March in Johannesburg, was the first of many public dialogues on the land question, more specifically whether section 25 of the Constitution should be amended to enable expropriation without compensation (EWC). The Dialogue was organised - at the request of the (ANC members of the) Constitutional Review Committee - by the Gordon Institute for Business Science (GIBS), Roelf Meyer's *In Transformation Initiative* and the Nelson Mandela University. Most organisations and individuals were invited at very short notice: in the case of the FW de Klerk Foundation, the invite came less than a week before the Dialogue took place. The agenda boasted a notable slate of speakers on the most topical issue confronting South Africa. Despite initial concerns about who was invited and who not, the Foundation - whose theme for 2017/18 is Land and Property - took the opportunity attend the two-day meeting. Ivor Jenkins, one of the organisers, confirmed that the event was organised in a very short space of time, and that some organisations had erroneously not been invited in time, but in the end those who really wanted to attend, could do so.

The Dialogue was well-attended from across the spectrum of interest. In addition to mostly ANC politicians, organised agriculture, the legal profession, academics, foundations, a number of human rights organisations and other NGOs attended. Agriculture was well-represented through umbrella bodies such as AgriSA, the African Farmers Association of SA (AFASA) and the Agricultural Sector Unity Forum (ASUF), as well as sectoral bodies such as Grain SA, SA Sugar Association (SASA) and Agbiz. Individual farming companies also attended: ZZZ (the well-known produce farm in Limpopo) and Grasslands Development Trust Share Milking from the Eastern Cape. The banks were represented through the Banking Association of SA (BASA) and the Land Bank. The range of attendees ensured a robust dialogue, with no pressure to toe any party or ideological line.

The two opening addresses were given by the ANC government, with former Secretary-General and current Minister of Mineral Affairs, Gwede Mantashe, standing in for President Ramaphosa, who was launching the important Youth Employment Initiative. He was followed by the new Minister of Rural Development and Land Reform, Maite Nkoana-Mashabane. Four panel discussions and plenaries allowed an array of other views to be put forward.

The main issue emerging over the two days was, not surprisingly, whether section 25 should be amended to allow for EWC. And if yes, how? If not, what then? Other issues included the question of why land reform has largely failed and how can it be accelerated, as well as how agricultural production can be elevated, food security improved and investment in agriculture be increased. A number of case studies focused on possible models, mechanisms and means to ensure that access to land and agricultural production became more inclusive and accessible.



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A first impression was that this Dialogue was planned as a way for the Ramaphosa faction to take charge and ownership of the EWC debate, rather than be dictated to by the EFF (as has happened with the parliamentary motion). This could be deduced from the almost total lack of rhetoric, apart from some anecdotal and emotional narratives about the importance of land and what disastrous results the deprivation of land has had on black South Africans. In addition, a by-product of the Dialogue was to facilitate the important dialogue within the ANC about EWC. One could see this clearly when Jeremy Cronin (Deputy Minister of Public Works and self-confessed communist), during his passionate input about why it was not necessary or desirable to amend section 25, physically turned to his right (!) and almost solely addressed his colleagues in government, as if trying to convince them first. This did not escape the attention of the many non-politicians present. While the ANC was caught on the back foot during the parliamentary debate, it appeared from this two-day event that it is trying to press the re-set button, and set the tone for a balanced and considered approach to the land question.

A second - and equally vital - impression formed at the meeting was that there was no disagreement about the importance and urgency for effective land reform. This should focus on the three well-known elements of agricultural, urban and communal/rural land. In the light of South Africa's rapidly urbanising population, special emphasis was placed by a number of speakers on the problem of urban land, where the "land hunger" was the greatest. This of course relates to the need largely for housing and shelter.

A third impression was that, with the exception of Mantashe, Nkoana-Mashabane and Motshekga and a small minority of the attendees, the majority of delegates (across race, gender and interest lines) agreed and argued that there was no need to amend the Constitution in respect of section 25. The majority argued that section 25 offered sufficient recourse as it stands and must, for the first time, be properly be used to enable effective land reform. The minority of delegates, who did argue for an amendment, spoke only of an explanatory amendment, in line with the present section 25.

Fourthly, everyone agreed that, as the Report of the High Level Panel led by former President Kgalema Motlanthe confirmed, the failure of land reform lies mainly on the shoulders of the post-1994 government. The Report highlights a lack of political will, a lack of budget, the negative effects of a lack of capacity in the relevant departments, as well as corruption, in hindering effective land reform. In addition, countless speakers attributed the failure of government to give black farmers on redistributed land title deeds. One delegate, who makes her living by selling land from white farmers to government, and then giving post-settlement support to the new farms, told me that she knew of literally hundreds of those farmers in Limpopo and Mpumalanga, where the new tenants had simply given up and left, due to a lack of finance and support from government. There was therefore almost total agreement that secure property rights are essential for land reform to be sustainable

In the fifth instance, there was agreement that the process of land reform and extended property rights should start with the so-called low-hanging fruits: government-owned farms



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lying fallow, municipal land for extended property rights, and other government-owned land not being used productively (such as that owned by the Defence Force and parastatals).

Finally, there was recognition that we need a rational debate on the issues of EWC, land reform, extension of ownership in urban areas and communal land. To be able to do this, a proper land audit remains necessary.

If one were to be cynical, the first Dialogue was a meeting of moderates within the ANC going through the motions of hearing other stakeholders, having already taken its decision. If one is more positive and realistic, the first Dialogue was a way for the ANC to take ownership of the debate and facilitate its own important internal debate with the help of external stakeholders. It has heard a loud and clear “yes” for land reform and the extension of property rights, and a resounding “no” to EWC. Whichever of the two it is, dialogue is still the best way to convince the ANC not to change section 25 to effect EWC.

*\*This is the first in a series of articles on the topic of EWC, land reform and extension of property rights*