

THE NEED FOR FURTHER CONSULTATION ON AMENDING THE CONSTITUTION

The FW de Klerk Foundation notes a number of concerning developments regarding the ongoing deliberations on amending section 25 of the Constitution to allow for expropriation of property without compensation (EWC).

Although the Ad Hoc Committee on Amending Section 25 of the Constitution (the Committee tasked to amend the constitution to allow for EWC) has decided to request Parliament to grant it a further 30 day extension to complete its work - which in principle ought to be welcomed - a number of critical issues under discussion should raise serious alarm bells for all South Africans. These include:

- the suggestion of land custodianship (with the State being the custodian of all land, including private land, in South Africa),
- removal of the 1913 cut-off date for land and redistribution claims (to make provision for such claims to go back earlier);
- the use of nil or zero compensation (for expropriated property); and
- a severely diminished role of the courts when determining issues related to expropriation of property.

It is reported that the parliamentary legal services continues to be intricately involved in the process and it “recommended to extend scope of the committee on some clauses as well as holding further public hearings.”

It is further reported that it seems “fundamentally that the ANC and EFF appear to be in some agreement that the courts should have a diminished role to play in expropriation matters” and that “although the EFF and DA preferred a 60-day extension, the ANC insisted on a 30-day extension.”

These developments raise a number of critical questions:

- Why are the ANC and EFF jointly supporting a limited role for the courts? A move to introduce any measures to limit the role of the courts will infringe on section 165(3) of the Constitution which prohibits any person, or organ of state, from interfering with the functioning of the courts;
- The ANC was seemingly, at first, not in favour of the EFF’s continued calls for nationalization of land and state custodianship of all land in South Africa - what made it change its stance on this point?
- Why is the ANC seemingly inflexible on the extra allocated time - i.e., 30 days instead of the proposed 60 days - could this be a voting tactic considering the upcoming elections?

Considering the serious negative implications of EWC for the country in general, but also these specific and more damaging parameters being driven by the EFF and ANC (i.e., land custodianship, zero compensation and limiting the adjudicative role of the courts to determine disputes) the Foundation implores Parliament to grant not only a 60 day extension to the committee but also another round of public participation - as suggested by the parliamentary legal services - in the process to address these new amendments.

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