

PRESIDENT RAMAPHOSA REJECTS THE IDEA THAT THE STATE SHOULD BE CUSTODIAN OF ALL THE LAND IN SOUTH AFRICA

Last Thursday the Foundation warned South Africans about the serious ramifications of the proposals put forward by the ANC and EFF at the beginning of last week for the amendment of section 25 of the Constitution to allow for the expropriation of property without compensation (EWC). The deliberations in the Parliamentary Ad-Hoc Committee that has been considering the text of the amendment, raised serious alarm bells. These included:

- 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 for the courts when determining issues related to expropriation of property.

The issue in the negotiations between ANC and EFF that caused most concern was an EFF proposal that the state should assume custodianship of all land in the country. The EFF threatened that it would “withdraw its support to amend section 25 of the constitution, or the property clause, should the ANC not back its calls to place all land under custodianship of the state”.

The EFF and ANC appeared to be moving closer to an agreement when the ANC agreed that the state would “take reasonable legislative and other measures, within its available resources, to foster conditions which enable state custodianship and for citizens to gain access to land on an equitable basis.”

The Foundation is accordingly relieved that President Cyril Ramaphosa announced at a press conference in Cape Town on Thursday last week that he was opposed to state custodianship over land in South Africa. He said that “state custodianship equals nationalisation, and that is not what the dispossessed want” and added that “the negotiations between the ANC and the EFF were not exclusive and that the ANC remained open to negotiating with other parties”. He also confirmed that “South Africa is a constitutional democracy, and no one can gainsay the role of the courts.”

On Friday the National Assembly extended the Ad-Hoc Committee's term until the end of August - by which time it must present its proposal for the amendment of Section 25. While effective land reform is mandated by the Constitution most experts - including former Chief Justice Arthur Chaskalson and the ANC's own High-Level Panel - were of the opinion that land reform could be achieved without amending section 25.

Although the President's recent statement is welcome - the question remains why the ANC is so intent on amending the principal constitutional protection for the property rights of all South Africans?

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