

Land reform, amendment of section 25 of the Constitution and organized agriculture

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Introduction

- Where are the opportunities for organized agriculture/farmers to influence debate about land / amendment of the Constitution?
 - What is the state of the process?
 - What should farmers/organized agriculture worry about, what not?

Where are we in the process?

- Commenced in February 2018, proposal tabled in Parliament – investigate amending section of the Constitution to allow ‘expropriation without compensation’.
- Constitutional Review Committee appointed; public process; December 2018 recommended amendment, appointment of ad hoc committee to develop and table proposal for amendment (now amendment ‘to make explicit that expropriation against nil compensation is possible’).
- Ad hoc committee didn’t conclude work before new Parliament; reappointed, must table proposal end of March 2019.
- In the mean time: publication of report of Presidential Advisory Panel on Land Reform and Agriculture In July 2019 – recommends amendment of section 25 ‘to make explicit that expropriation against nil compensation is possible’ (‘minority report’); also other important recommendations.
- Also keep in mind legislative process re Expropriation Bill; proposal that it be expedited, does much of the work that constitutional amendment would.

Where does that leave agriculture?

- Not at all clear what is going to happen.
 - Political game between ruling party and others (EFF).
 - Conflict between factions in ruling party.

This creates significant opportunity for influencing process
- What is (relatively) clear, is what kind of amendment ruling party will propose: 'to make explicit what is implicit in the Constitution, namely that land may be expropriated not without compensation, by under some circumstances against an amount of nil compensation'.

This also creates significant space for influencing process **and its effects.**

What does agriculture not have to worry about?

- The amendment of section 25 of the Constitution.
- How can I say this? Nature of current proposal for amendment means two important things:
 - Nationalisation of land off the table for ruling party ('custodial taking'); also 'land invasions'.
 - Current proposal if adopted, will change nothing in legal terms to the position of landowners (despite the obvious and serious economic consequences) (ie, has always been possible to expropriate land against payment of nil compensation; will be possible even if Constitution not amended in this way (Expropriation Bill)).
- This has two consequences regarding opportunities to influence outcome:
 - Whereas before, power of state to expropriate land against less than market value and possibly nil compensation was undefined; now state has to give form to that power.
 - Opportunity to influence impact of amendment on value of land; business confidence; investor confidence.

What should agriculture worry about?

- Idea implicit in amendment of section 25 that expropriation should be the main method of acquiring land for land reform purposes. But not such a problem:
 - Expropriation is difficult
- Renewed focus on restitution