

The ANC/EFF's Expropriation without compensation Bill poses an existential threat to South Africa

Introduction

In the past few weeks, South Africans have watched in dismay as the ANC, working together with the EFF, continued to push for extreme versions of their ill-advised plan to amend Section 25 of the Constitution to allow for expropriation without compensation.

This ANC/EFF coalition has made it clear that not only do they want to deny South Africans the right to own property, their ultimate goal is to nationalise all land in the country and exclude the courts from adjudicating on land expropriation cases.

It is an unprecedented assault on our Bill of Rights which guarantees every citizen's right to property ownership and administrative justice.

We cannot afford to stand by and watch as our Constitution is torn to shreds and the economy is pushed to the brink by a reckless ANC/EFF political coalition. The Section 25 Amendment Bill, and all its attendant clauses, poses an existential threat to the rule of law in South Africa.

This is why today, the DA, with input from Free Market Foundation and Sakeliga, are here to sound the alarm on the disastrous consequences that lie in wait for the country should the Bill be accented to. The DA holds the position that the Bill should never have been brought before Parliament to begin with.

The Constitution is not to blame for the rank failure of land reform in the past 27 years. Rather, the ANC has run a chaotic land administration system that has been characterised by:

- Very slow progress in terms of the volume of land transferred;
- A tenure reform programme which has not addressed the insecurity of tenure in communal land areas;
- An unacceptably high failure rate in terms of agricultural activity on land transferred through the land reform programme due to poor government support to resettled farmers;
- Continued uncertainty in terms of the true state of land reform in South Africa in the absence of a land audit which could quantify the contributions to land reform by the private sector.

It is now common knowledge that the High Level panel report on land reform that was headed by former President Kgalema Motlanthe, concluded that the real constraints to land reform have been endemic corruption by officials, diversion of the land reform budget to the political elite and a lack of political will. These are all factors that the government has control over without need for recourse to constitutional amendments.

Anatomy of the ANC/EFF's nationalisation of land and judicial exclusion clauses

The conversion of Parliament into an ANC/EFF political theatre to undermine the Constitution has perhaps been the most glaring consequence of this ill-considered process to amend Section 25 of the Constitution.

On the 31st of May, a day by which the multi-party Ad-Hoc Committee on Section 25 should have concluded its work, the ANC/EFF coalition placed on the Committee's agenda a proposal to place land in the custodianship of the State.

Let's be clear, the bid to place land under the custodianship of the State will effectively "nationalise" the land under the control of the State – a disastrous move that will lead to economic devastation and escalating poverty, as it has already done in countries as diverse as Venezuela and Zimbabwe.

What makes matters worse, is the ongoing attempt by the ANC/EFF to exclude, or minimise the role of the courts, in adjudicating land expropriation cases.

By attempting to include the provision that courts should not have a role to play on issues related to the expropriation of private property, the Ad Hoc committee is essentially overstepping Parliament's constitutional role as it cannot prescribe to the judiciary what it can or cannot do. The DA vehemently disagrees with any attempts to reduce the role of the courts because it will take away the protection that citizens have against arbitrary actions of the state.

We believe that this blatant abuse of power by the ANC/EFF is in line with its determination for the Party to control the State and for the State to control the whole of society.

The ANC is trying to make extreme concessions to the EFF on this ill-thought amendment in the hope that they will help them secure the two thirds needed in the National Assembly to pass the Bill. This is not only reckless but is also revealing because it shows that theirs is not a fight for genuine land reform but an internecine fight to shore up their fledging political support.

The determination of the ANC/EFF to press on with this issue before the Local Government Elections, with a view to using it as a campaign platform, has galvanised the DA to stop them and defend our Bill of Rights. On 4 June 2021, we took a principled stand and voted against the motion submitted by the ANC Chief Whip to request an extension to the Section 25 Ad-Hoc Committee to 30 August, although they eventually passed it using their majority in Parliament.

Instead of addressing its shortcomings in land reform, the ANC chose to scapegoat the Constitution and open the door to a belligerent EFF that wants to tear down the foundations of our democracy. The DA will do whatever it takes to prevent this, as it will push South Africa into the abyss, destroying what is left of our economy by deterring

investment, destroying prospects for growth, and driving millions more people into extreme poverty.

The Section 25 Amendment Bill will undermine the rule of law and damage the economy

South Africa's constitutional dispensation recognises the rule of law as a sacrosanct value that exists to protect fundamental human rights of all its citizens, including security of property rights.

Today we make the case that upending the current system of private property ownership in favour of the ANC/EFF's call for the state to assume custodianship of all land, will be detrimental to the rule of law as it would mark the end of existing constitutional provisions which guarantee property rights.

Despite this grave danger to the rule of law and indeed the future of the country, the ANC has continued to speak from all sides of the mouth on the matter of expropriation without compensation, depending on the audience.

On the one hand, we have an ANC in the Ad Hoc committee agreeing with the EFF that the Section 25 Amendment Bill should be revised to enable "state custodianship" over land. On the other hand, we have President Ramaphosa in soothing tones reassuring the business community and investors that this kind of expropriation will not happen, and that EWC will be undertaken in such a way that it does no harm to the economy and food security.

Somewhere in the middle, we have the ANC's Vuzumusi Xaba trying to allay concerns by speaking of "temporary custodianship" that will apply only in the "period between acquisition and redistribution". Yet already, land acquired for redistribution is being retained by the state and merely long-leased to land reform beneficiaries. So no one should be reassured by this notion of "temporary custodianship".

EWC will damage South Africa's economy much more than Covid, which is a temporary phenomenon. Indeed, even flirting with the idea of EWC has already cost our economy dearly. The value of South Africa's financial sector has dropped by a third since Ramaphosa's first EWC announcement in 2018. South Africa is now the only sizable emerging market country with net *outflows* of foreign direct investment. Foreign direct investment fell 46% in SA in 2020 compared with only 11% for Sub-Saharan Africa as a whole.

Just the talk of EWC has already turned SA into an investment desert, irrigated only by a jobs bloodbath. The ANC would have South Africa believe that its pursuit of EWC is motivated by the need for social justice. Yet nothing could be more socially unjust than taking South Africa down the path that Zimbabwe and Venezuela have already travelled, in the ANC's pursuit of populism to keep its patronage networks flowing.

The DA will fight to protect and promote the rights enshrined in the Constitution. As it stands today, the Constitution already makes provision for real redress and the real transformation of our society. What is lacking, is political will.

DA governments provide a template for land reform in South Africa

The DA has continued to show its full commitment to land reform in areas where it governs based on a clear vision that is aimed at building a strong, thriving and diverse economy in both rural and urban areas.

Since 2014, the Western Cape government has supported 357 Land reform Projects with over R500 million from the Comprehensive Agricultural Support grant. This has contributed immensely to the high success rate in Provincial land reform farms when compared to the national government's land reform projects.

The Western Cape remains the only province to conduct an independent audit of all land reform projects within its borders. At national level, the ANC government has ignored repeated DA calls for an independent national land audit.

Their reluctance is hardly surprising. The national land administration system is in shambles to a point where the Department of Agriculture, Land Reform and Rural Development is constantly engaged in endless litigation with frustrated communities who feel hard done by the Department's incompetence.

Instead of leaving farmers and resettled communities to fend for themselves, as is the case with most ANC land reform projects, the Western Cape government created a specialist entity called Casidra which provides additional technical support to farmers. It procures equipment and infrastructure on a beneficiary's behalf and ensures that it is delivered.

The Western Cape has progressively increased the budget for Casidra by almost 44% in order to speed up land reform across the agricultural sector.

The success rate for land reform projects in the Western Cape is based on the fact that our teams of Agri-economists, Farmer Support and Development Officers and Extension Advisors conduct thousands of farm visits per year, helping farmers with all manner of technical advice, including the preparation of business plans to access state and private funding.

A key distinguishing feature of the agriculture administration system in the Western Cape, when compared to other Provinces, is that it is conducted in a fair and transparent manner. R80 million per annum is being leveraged from the private sector to support emerging farmers. This is made possible the Western Cape government's unique partnership with 11 commodity groupings, representing sectors ranging from horticulture to livestock. Support includes market access contracts, production support and technical assistance.

Land reform in South Africa will never succeed unless corruption is eliminated from the land value chain system and professional support is provided to emerging farmers by provincial agricultural departments. Nationalisation of land, as advocated by the ANC and the EFF reverse the gains that farmers in the Western Cape have painstakingly achieved over the years under a DA administration.

Concluding remarks

The DA fundamentally disagrees with the ANC position to expropriate land without compensation, because no Constitutional amendment is necessary for substantive land reform. This would take away value and ownership from all South Africans.

Amending section 25 of the Constitution to allow for expropriation of land without compensation will not address the systemic challenges currently facing the land reform process in South Africa. What is needed is a pragmatic and rational approach that will operate within the confines of current constitutional provisions on land reform. If the ANC pushes through with this amendment, the DA will not hesitate to take the fight to court, including presenting our case to the international community. Land reform failure in South Africa has not been triggered by a Constitutional failure, but it most certainly has been a glaring governance failure.