



www.ngkerk.org.z

ALGEMENE SINODE: NEDERDUIITSE GEREFORMEERDE KERK

✉ 13528
HATFIELD, 0028, SA

☎ +27 (0)12 342 0092

📠 +27 (0)12 342 0380

sophiadk@ngkerk.org.za

14 June 2018

SUBMISSION ON EXPROPRIATION WITHOUT COMPENSATION

EXECUTIVE SUMMARY

In the explanatory section of the motion passed by the National Assembly on 27 February 2017 it was suggested that the goal of the proposed amendment to Section 25 of the Constitution is to permit the expropriation of agricultural land to facilitate land reform. The mandate to the Constitutional Review Committee, set out in Paragraph 9 of the resolution, contemplates the expropriation of agricultural as well as urban land. In this submission to the Constitutional Review Committee the Dutch Reformed Church will set out its views on land reform. The Dutch Reformed Church will argue:

- that the property clause is not an impediment to land reform and that no changes need to be made to Section 25 of the current Constitution to achieve just and equitable land redistribution;
- that expropriation without compensation must be in accordance with the stipulation in Section 25 of the Constitution;
- that food security must be secured and enhanced at all cost;
- The way forward: The National Development Plan gives important direction indicators which can be helpful to fast track land reform.

Introduction to the Dutch Reformed Church and its interest in land reform

In his recent first State of the Nation speech our newly elected President, Mr Cyril Ramaphosa, quoted Hugh Masekela's song: "Thuma Mina". He said Masekela anticipated a day of renewal, of new beginnings. Then he quoted him as follows: "I want to be there when the people start to turn it around. I want to be there when they triumph over poverty. I want to be there when the people triumph against Aids. I want to lend a hand. I want to be there for the alcoholic. I want to be there for the drug addict. I want to be there for the victims of violence and abuse. I want to lend a hand. Send me."

The official hymnal of the Dutch Reformed Church also contains a song with the same title and theme: "Thuma mina, thuma mina, thuma mina, Somandla." We answer to our calling as Christians but also to the call of our president when we say, send us. We want to be there when the people of our country will have access to land in a fair, equal and sustainable way. We want to be there to participate in a process of land restitution and the reformation of policies pertaining to the redistribution of land. We want to be there when the dignity of the people of our land is restored, when people will have access to land, food and jobs. We want to be there when foreign countries

and companies invest in our economy and help to create the wealth and prosperity deserving of people who are committed to an unwavering work ethic and dedication to create access to opportunities for their children. Thuma mina, Somandla.

1. The Dutch Reformed Church (DRC)

1.1 Background

When the Vereenigde Oostindische Compagnie (VOC) arrived at the Cape in 1652 it coincided with the Protestant Reformed faith setting foot ashore. Originally the government of church and state was totally mixed up. The reformed faith community nevertheless grew sharply. Khoikoi people were baptised and taken into the faith community. The church functioned under the rule of the mother church in the Netherlands until 1824. Then the congregations, which became known as the Dutch Reformed Church formed a synod with local authority on doctrinal and church orderly matters.

In 1857 the DRC was divided into a separate white and a coloured church. This decision was an early indication of the sad institutionalised racial and theological rift within the church that would haunt the church for decades.

The DRC played an important role in the construction of apartheid by providing a theological rationale for an ideology of racial division and white superiority. In 1986 the DRC radically changed her policy on race relationships and declared apartheid a sin. Since 1986 the DRC went on to repent at many occasions about her involvement in apartheid, and participation in a system which all white people should have recognised to be discriminating, dehumanising and sinful.

The DRC understands that the legacy of apartheid still prevails, that the majority of white people are still enjoying economic privilege as a result of the history of our country and that the social and economic inequalities require redress. Over the years the DRC also took strong and unambiguous resolutions about the deforming of society through racism, patriarchy and other dehumanising assumptions and systems of thought. We are currently, together with our sister churches, in a **Season of Human Dignity** to further the truth of the equal value of people in the eyes of God. Four values are promoted, namely respect, listen, embrace and love.

The DRC was welcomed back into the South African Council of Churches, the World Council of Churches and many other ecumenical bodies. It made a commitment to the rebuilding of our society and over the past decades we made significant contributions to processes of reconciliation and restitution. The DRC is currently engaged in talks and programmes with NGO's like Khulumani Support Group, locally and nationally, and several other initiatives like Worcester Hope, Coligny, Kleinmond and many other local communities.

The DRC is through her Office for Public Witness involved in Parliamentary processes and has made significant contributions to legislative processes.

1.2 Diaconate and community involvement

It is part of the characteristics of the reformed tradition that the church takes her diaconal calling very seriously. The DRC has many NGO's which provide professional services to the poor, the elderly, families, HIV/Aids and tuberculosis patients, people with physical and

neurological handicaps and especially suffering children. In 2017 we delivered **professional services to 1.1 million less privileged citizens**. We annually train hundreds of **students** from across the spectrum of citizens to qualify as social workers, child and youth care practitioners, community developers and youth workers. We serve the nation regardless of creed, race, sexuality, background or gender.

The services and support which our local congregations deliver to their broader communities, in particular the needy and marginalised, are countless.

The church is also becoming more and more multiracial in her membership and we are committed to expand the unity of the church beyond old racial boundaries.

1.3 Redistribution of land

1.3.1 Farmers as our members

The majority of the 34 000 farmers in South Africa are members of the DRC. The DRC's involvement and participation in the land debate are in many ways existential of nature. The church knows too well that we have a huge obligation to contribute to the transformation of ownership of land. But we also know that people's lives are at stake, farmers and labourers alike.

1.3.2 Official church involvement since 2002

The General Synod participated in discussions on land reform since 2002. Several resolutions to promote land reform were taken. A Task Team was also established to guide the discussions and actions of the church. The Task Team developed its own ethos, with a specific reformed theological point of departure. The following Christian values were taken as guidelines to inform the church on matters of policy on Land Reform, namely: Justice, Restitution and Reconciliation.

1.3.3 Pastoral responsibility and values

There is a very strong pastoral side to this venture, supporting and ministering to the farmers and their employees against the backdrop of severe droughts and brutal attacks on farmers and farm workers.

It was done within the framework of the core values of the South African Constitution – values such as the promotion of the human dignity of all citizens (Section 9) and eradicating any wrongdoing in this regard, as well as addressing the impoverished state of many farm workers, seeking to strive for socio-economic justice for all citizens in this sector of our society.

1.3.4 2011 resolution

In 2011 the General Synod adopted the following resolution: **“The General Synod also wants to give a loud and clear testimony to the state in favour of restorative and reconciliatory justice. This means that justice should include respect for the rights and dignity of all people (obviously the whole farming community).”**

1.3.5 Workshops and models of restitution

Over the years we organised and participated in many workshops on land reform. We've learned many lessons and became aware of the willingness of citizens and particularly farmers to find solutions. Many farmers actively pursued models of integration of sustenance farmers and entrants to agriculture. There are many success stories to be told. We nevertheless are aware of the diverse demands pertaining to the issue and that robust deliberations will have to be undertaken on a road to justice and peace.

1.3.6 Title deeds and security of land tenure

In March 2017 we, together with the Institute for Justice and Reconciliation, hosted a **conference in Cape Town on title deeds and security of land tenure**. Many NGO's from black communities, Plaas (UWC), Khulumani Support Group etc and government officials from all three tiers of government were attending. We were perplexed by the fact that the participants who are working in the same field have not been brought together in official deliberations and discussions. We realised that the church has an important role to play as facilitator and creator of safe spaces for those who participate in controversial debates about transformation and justice.

We are very aware of the millions of people who want to own the houses in which many of them were born and raised.

We are also aware of the multitude of people who live in townships and settlements where they are cramped up to the extent that their dignity is impaired.

We also took cognisance of the claims of many people to have security of land tenure.

1.3.7 Relationship with organised agriculture

Many of the leaders of organised agriculture are members of our church. We have good relationships with these organisations and believe that we may be able to play a facilitation role between the farming organisations and other participants in the debate about land.

2. An RDP (reconstruction and development plan) of the soul

2.1 A wounded country

In his address at the opening of Parliament in February 1999, President Nelson Mandela said our nation needs an RDP of the soul. In his eulogy at Ms Winnie Madikizela's funeral our current

President, Mr Cyril Ramaphosa said: "We must also recognise our own wounds as a nation. We must acknowledge that we are a society that is hurting, damaged by our past, numbed by our present and hesitant about our future. This may explain why we are easily prone to anger and violence." We urgently need an RDP of the soul. There are too many signs of unattended wounds, hurt, anguish and emotional suffering which have not been dealt with. If we don't address it now, it will haunt us forever.

2.2 Bringing together good people to restore our community and dignity

Reconciliation and restoration will not happen as a result of legislative transformation and measures only. It will happen because good people started to share their stories and needs, and find a way forward in which all benefit. As church we want to be part of the RDP of South Africa's soul by bringing the well-meaning people of all races together in safe spaces so that we may enjoy and witness about, and marvel at the miracles of reciprocal insight, reconciliation and restitution.

2.3 Morality

We have to restore the moral convictions of our people. Too many ethical bottom lines have been abandoned for the sake of short term gain. The land debate provides us with a golden opportunity to redress our ethics and regain our dignity.

2.4 Hope

We have to believe in the beauty of our dreams. We have to believe that the world and our country can become a place where everybody's dignity is safeguarded by a common commitment to respect, listening, embracing and loving. But we will only be able to maintain our hope through faith in the grace and truth of God. We will have to be witnesses to his presence and of his hope-sustaining love. The RDP of the soul will not happen without our nation's profound understanding and experience of God's truth and love.

3. The stance of the Dutch Reformed Church on land reform

The topical issue for the DR Church has never been the merit of land reform, but the effective and fair execution thereof. The history of land ownership in South Africa and the way the redistribution of land is approached, have an ethical moral aspect, about which the church would like to express its prophetic voice, as it does about other issues.

The DR Church accepts as a point of departure that land reform in a South African context and from a Christian conviction is just and necessary. The church has declared herself willing to support and help promote a justifiable process that ensures justice for all. The church has on more than one occasion committed herself to guide and support her members in a positive way in this regard. Economic stability is a prerequisite for peace, reconciliation and prosperity in our country. A new generation of successful commercial farmers, black and white farmers, is necessary to ensure a strong economic foundation and food security.

A constructive and effective debate is crucial to address the effectiveness of the current Land Reform system. The Dutch Reformed Church wants to support workable solutions within the existing constitutional framework and will endorse a just and equitable compensation where land is expropriated in the national public's best interest, which is the cornerstone of any progressive economy. By stating its position, the Dutch Reformed Church wants to state the following:

3.1 No changes need to be made to Section 25 of the Constitution to achieve just and equitable land redistribution

In a historic moment on the 18th of February 2018, Parliament passed a motion to review Section 25 of the Constitution which deals with property and land expropriation. Parliament's constitutional review committee has been charged with reviewing Section 25 of the Constitution

to allow for land expropriation without compensation. Section 25 states that property may be expropriated only for “a public purpose or in the public interest” and “subject to compensation” – the amount of which, and the time and manner of payment, must either have been agreed to by those affected, or decided by a court. The Constitution mandates a land reform process to provide equitable access to land (S25(5)), security of tenure (S25(6)) and restitution (S25(7)).

The current debate is about two possible ways to fast track land reform. One approach is that the Constitution should be amended to allow the state to expropriate land without compensation. Another view is that the Constitution does not present a significant obstacle to radical land reform, and that the state should act more progressively to expropriate land based on the Constitution’s requirement of just and equitable compensation.

The Dutch Reformed Church would like to endorse the way of thinking that there is nothing in our current constitutional framework which hinders meaningful land reform. Amending the Constitution to allow for land expropriation without compensation is not necessary as it is already provided for under current legislation. No amendment to the Constitution is required to make land reform work, and certainly no abrogation of private property rights is required.

Any changes made to the Constitution still need to be read and understood in line with other Constitutional provisions – and possible infringements that may be brought by the changes.

Section 25 of the Constitution sits within the Bill of Rights, together with rights such as the right to life, the right to an environment that is not harmful, the right to freedom of association and religion amongst others. As such the Bill of Rights is a cornerstone to our democracy. It has been argued that if changes to Section 25, which forms part of the Bill of Rights, impinge on the founding values of the Constitution, then a 75% majority might be required. This might require taking the matter to the courts for a declaratory order.

Section 25 of the Constitution, outlines three fundamental concepts of land ownership in South Africa:

a. Deprivation of property

No-one may be deprived of property except in terms of a law of general application, that loosely means that the law must apply to sections of the population equitably, and that no law may permit the arbitrary deprivation of property. In this regard, Section 25 speaks of property in a general sense, and does not limit itself to land, according to constitutional experts. It is arguable therefore that Section 25 encompasses the protection from deprivation of property in a wider sense, such as assets, shares and movable assets and not only land. In fact, it states pointedly in Section 25(4)(b) that property is not limited to land.

b. Equitable compensation

Section 25 goes on to say that property may be expropriated for a public purpose or public benefit subject to just and equitable compensation. Public interest specifically includes land reform and the nation’s commitment to achieving equitable access to natural resources. Section 25 also includes a scheme and/or factors to be considered in the calculation of compensation and this includes the history of the acquisition of the property, the purpose of expropriation and market value is one of four factors. It is not the only factor, although the government decided to use the “willing-buyer willing-seller” principle historically, which was

contrary to Section 25 of the Constitution.

c. Obligation on the State

The third aspect of the clause, is a directive and an obligation placed on the State to ensure that it fosters conditions to ensure that citizens can gain access to land on an equitable basis.

In this regard, access to land is not necessarily ownership. Access to land may mean leasehold and/or being able to use the land. This aspect also protects the security of tenure of historically disadvantaged communities and those dispossessed of property after 19 June 1913, because of past racially discriminatory laws.

Whilst Section 25 protects against the deprivation of property arbitrarily, it also, in Section 25(8), states that nothing in the clause may impede the realisation of land reform.

The Constitution empowers government to effect radical land reform in the following ways:

Section 25(2) provides that private property may be expropriated subject to compensation for both public purposes (e.g. building a road, the Gautrain) or in the public interest (e.g. land reform).

Section 25(3) deals with how compensation is to be determined. Market value is only one consideration.

Section 25(5) mandates government to take reasonable legislative measures to enable citizens to gain access to land on an equitable basis.

- Reasonable legislative measure could be to give State land to the poor. False and misleading statistics are used disingenuously to show how much land the state owns, which is far higher than the 13-15% often stated.

Section 25(6) says government must ensure insecure tenure is secured

- Government needs to enhance land reform, stop conveyancers hindering the implementation of legislation like the Upgrading of Land Tenure Rights Act.
- Leasehold titles must be upgraded to full ownership.
- Pre-emptive clauses in RDP house title deeds act against the spirit of this provision making tenure insecure and precarious for the first eight years of "ownership".
- RDP deeds must be made into real title deeds.

Section 25(7) is the restitution provision.

- Owners whose property was taken because of race are entitled to receive the property back or financial compensation. Restitution is very important in the security of property rights.

Section 25(8) says that no provision in Section 25 can be interpreted to impede government from effecting land reform.

Any departure from Section 25 by government must be justifiable in accordance with the

limitations provision in Section 36. This provision makes expropriation without compensation possible, i.e. the Constitution need not be amended.

If Government wants to fast-track land expropriation and restitution, the Constitution provides a conducive framework for this, as is recognised by the November 2017 High Level Panel Report. What is needed, much more than legislative amendment, is coherent political direction and effective implementation of land reform mandates.

3.2 Expropriation without compensation must be in accordance with the stipulation in Section 25 of the Constitution

The key phrase in the resolution taken on the 16th of February 2018 is probably: “Expropriation of land without compensation should be among the key mechanisms available to government to give effect to land reform and redistribution”. Then come the famous caveats, that “we must ensure that we do not undermine future investment in the economy, or damage agricultural production of food security. Furthermore, our interventions must not cause harm to other sectors of the economy. These caveats are indeed of the utmost importance.

The Dutch Reformed Church would like to argue that expropriation without compensation should be a last resort and must be according to the guidelines set out in the Constitution.

Expropriation of land without compensation will not only affect farmers or those in rural areas, but has the potential to snowball into a situation that will touch all South Africans.

South Africa’s agricultural sector is competing in a tough environment against global competitors who receive considerable support from their governments in the form of subsidies and non-tariff measures. The sector has to import many of its inputs, which places SA producers at a disadvantage due to the fluctuating exchange rate. As a result, the sector has become highly reliant on credit, which usually takes the form of bond financing. It was recently estimated that SA farmers are indebted to the tune of about R162bn. This debt is shared between the Land Bank (25%) and development finance institutions and agribusinesses (former cooperatives), but the lion’s share (70%) is held by commercial banks.

To reduce the risk if a farmer cannot repay his loan, banks often couple a loan to the value of the land by registering a bond that allows them to sell the land as a last resort. If the Constitution were to be amended to allow expropriation without compensation, it could endanger the faith banks place in the land as security and set into motion a chain reaction that eventually leads to the ordinary consumer losing out. If the state can take land without paying for it, then the integrity of the land market will be compromised and banks will not be able to recover depositors’ money that was loaned to farmers. No bank has sufficient liquid assets to pay out all their depositors’ money in one go, as funds are locked up in long-term investments.

As much as economic transformation and/or inclusive economic participation is needed in South Africa, expropriating agricultural land without compensation will seriously damage the agricultural sector’s sustainability, its commercial viability and national food security, which will only deepen poverty. This will make food production even more expensive. South Africa will need to import food to feed its population, driving up food costs. Households will feel financial pressures amid rising inflation, job losses, further credit rating downgrades and generally weak consumer confidence.

Expropriation without compensation erodes property rights. And once this happens, land can no longer serve as collateral. Any deprivation of property without compensation constitutes a very serious breach of an individual's rights. The UN guide requires, among others, clear and transparent procedures for forced acquisition of property and compensation that will ensure that the affected persons are not worse off after expropriation than they were before. It further states that affected persons must not only be compensated for the loss of land, but also for improvements made and for the disruption that accompanies expropriation. International authority and best practice dictate that people who are expropriated may not be worse off after expropriation than they were before. If deprivation without compensation is possible regulatory steps must be utilised and these will only be constitutional if they are not arbitrary. This is because the Constitution prohibits arbitrary deprivation. Existing constitutional mechanisms for land expropriation can be used.

A policy of expropriation without compensation will discourage investment in farm technology and innovation, which drives agricultural productivity. The sector will regress, productivity will be compromised and further job losses will follow. South Africa will face international disinvestment and the risk of losing the benefits it currently enjoys from the African Growth and Opportunity Act (Agoa). Agoa gives sub-Saharan nations, including South African farmers, duty-free access to the lucrative US market.

In 2014, for example, South Africa's agricultural exports to the US were to the value of R2.9 billion. It is projected that the US market will offer R1.6 billion per year in additional export opportunities from 2014 to 2019. Agoa is a unilateral pact and one of its primary criteria is respect for property rights. The US has shown itself more than willing to revoke eligibility for Agoa. Furthermore, South Africa's biggest trading partner is Europe, with agricultural exports totalling around R26.7 billion in 2016. The combined effect of South Africa not being able to export agricultural products to the US and/or Europe would be catastrophic.

In 2016, the value of capital investment in the agricultural sector was recorded at R427,790 million, in which land and fixed improvements constituted 54.1 percent. Expropriation without compensation is likely to change this trend, leading to large disinvestment in the sector. Without investment, the sector will regress, productivity will be compromised and job losses will then ensue, and this may well throw the country deeper into recession in the coming years.

In addition, agriculture is critical to the development of the economy as the sector that has strong backwards and forward linkages with the rest of the economy. Through backward linkages, agriculture purchases goods such as fertilizers, chemicals and implements from the manufacturing sector. On the forward linkages side, agriculture supply raw materials to industry and the food supply chain in general. Approximately 70 percent of agricultural output is used as intermediary products in other sectors, particularly the agro-processing sector which contributes almost 20 percent to employment in the manufacturing sector.

The amount of the compensation must be "just and equitable", reflecting a balance between the public interest and the interests of the landowner. What the amendment seeks to do, is remove "subject to compensation". But what the Government has never done, is develop a land-reform policy that considers "just and equitable compensation". Under the current Constitution, the governing party could still craft legislation with its own definition of "just and equitable compensation".

In the High-Level Plan, released in November 2017, the panel found that "government has not

used the powers it already has to expropriate land for land reform purposes effectively, nor used the provisions in the constitution that allow compensation to be below market value in particular circumstances." Rather than recommend that the constitution be changed, the panel recommends that "government should use its expropriation powers more boldly, in ways that test the meaning of the compensation provisions in Section 25 (3), particularly in relation to land that is unutilised or underutilised."

There is also an overarching "limitation clause" in the Bill of rights that can be used to justify the withholding of compensation. Legislation can be passed that allows the state to withhold compensation in certain circumstances. These include cases where land is unoccupied or not put to productive or social use, and where buildings are unoccupied. Unused and unproductive land can be focused on, especially prioritising well-located land that can be used for food security, promoting new productive farmers.

The DR Church is in favour of compensation for land owners who are deprived of their land for land reform purposes. It must be determined based on considerations of fairness and equitability.

Short cuts aimed at under-compensating such land owners could hold serious implications for the agricultural sector and the economy as a whole. International best practice is based on the principle of equivalence, which assumes that a person should be compensated for the real and actual loss that he or she suffered. The intention is to place a person in the same position as he or she would have been in had they not been deprived of their property.

3.3 Food security must be secured and enhanced at all cost

Section 27(1) and (2) of the Constitution guarantee every citizen the right to sufficient food, whereby the state must take reasonable measures to ensure the realisation of this right. To ensure fulfilment of this constitutional imperative, Cabinet approved the National Policy on Food and Nutrition Security (the Policy) in 2013. The Policy seeks to improve food production and distribution and promotes smallholder production, which is interchangeably used with "subsistence farming", "community-based farming", or "peasant farming". While smallholder farmers have limited resources, they play an integral role in creating livelihoods and ensuring food production amongst the poor-rural population. The Policy envisaged a framework to safeguard the right to sufficient food, however food insecurity remains pervasive.

South Africa's population has increased quite rapidly in the past ten years. In 2035, the South African population is estimated to reach more than 80 million. This means more food supply will be required to sustain the growing population.

The land is one critical factor for production in the sector and its ownership is critical for the sustainability of the sector. Since it is the responsibility of the agricultural sector to produce food, the sector's production capacity will need to be enhanced to avoid food demand surpassing domestic supply and to ensure that the sector remains adequately competitive. This can only be possible if commercial farmers remain on the farms.

As can be seen, the population has increased and is still increasing substantially, while food production has also been increasing but at a decreasing rate. Between 2014 and 2016 food production was hampered by the country-wide drought that cut down grain production by half. Food production in 2017 was expected to pick up vigorously owing to improved weather

conditions experienced around major grain areas in the country. However, expropriation without compensation is undoubtedly posing a bigger threat to food production for the future production cycles than the recent drought. Without drastic improvements in food production, South Africa and the Southern African region will have to rely on food imports.

Given South Africa's recent downgrade to "junk status", the country may see higher food inflation in the future, which will further threaten food security. According to the Food Price Monitor released by the National Agricultural Marketing Council, South Africa's overall food inflation for January 2017 was 11.4%, with sugar, sweets, and bread accounting for the largest contributions. A rise in food costs, compounded with rising oil and energy prices, may exacerbate the status of South Africa's already precarious food security conditions.

3.4 The reasons for the slow progress

The failure to empower people economically through land reform is a failure of implementation rather than a failure of legal framework. The reality is that South Africa's land reform programmes introduced post 1994, have seen more than 90% of land reform projects fail or remain unviable. A national debate on this important issue is more than welcome.

The land reform programme started by the 1994 Restitution of Land Rights Act has largely failed.

A green paper on land reform took six years to compile. There is little work being done on the Land Tenure Security Bill. The Communal Land Resources Act of 2004 was declared unconstitutional in 2010, in a judgement, which turned on technical details yet left the substantial problems related to communal land ownership unaddressed. The Extension of Security of Tenure Act, meant to protect vulnerable farm workers and dwellers, has not been adequately enforced. So, land tenure and security, both within traditional structures and on conventional farms, remain unresolved.

Agricultural extension and support programmes such as the Comprehensive Agricultural Support Programme (CASP), Micro Agricultural Financial Institutions of South Africa (MAFISA) and the Land Care Foundation have been criticised by both parliamentary committees and by farmers. Despite a promise to transfer 30% of agricultural land by 2014, only 8% has been transferred.

The general consensus is that the progress of land reform has been sluggish and the impact has been minimal. The Finance and Fiscal Commission's 2016 Report indicates that despite the state having spent some R50 billion over the past 20 years on the various land reform programmes, these programmes have failed to achieve their objectives. An urgent review of the current land reform framework is therefore required. While land has been highly politicised, the importance and effects of land reform have been largely overlooked.

A high-level panel chaired by former South African president Kgalema Motlanthe has consulted a number of experts, stakeholders and local communities to pinpoint the exact reasons why the land reform programme has not yielded the expected results for many. The report rightly identifies poor implementation as the land reform programme's Achilles' heel, and it also identifies where improvements can be made in the legislative framework, a welcome contribution to the debate.

The following was noted by the High Level Plan report:

1. Compensation for land is not the main obstacle to land reform, but rather corruption by officials, the transfer of budget money to the elite, the lack of government's political will and the lack of training and capacity by the government.
2. A second factor is the lack of a budget for land reform. In 20 years allocation for land reform, with just 0.4% of the national budget, has not kept pace with inflation.
3. Thirdly, the report shows that instead of empowering and advancing new land owners, they become in effect "tenants" of land to the state. Title deeds are not granted to them. For that reason, the land cannot be used as collateral to buy cattle, seed and implements.
4. Fourthly, the report states that the government has not effectively used its constitutional power to use land for reform purposes, nor has it used the constitutional provisions that compensation may be below market value under certain circumstances.
5. Fifthly, the report states that the state has "not sufficiently promoted, enforced and protected" the rights of disadvantaged South Africans in Art. 25 (5), (6), (7) and (9) but that these rights are rather under siege through "policies and practices" which are to the benefits of potential political alliance partners and are a channel to a specific elite.
6. In addition to corruption, a lack of capable officials, budgets and title deeds, poor legislation and poor application of existing legislation, other problems are being highlighted.

The Motlanthe report contests the amendment of Article 25. Rather than amending Art. 25, the government should rather use its expropriation powers more strongly in ways that will test the provisions in Art. 25 (3), especially with regard to land that is unused or underutilised, especially land belonging to the state. It is primarily the state that has renounced its duty to carry out the constitutional mandate on land reform. If the state wants to enforce its constitutional mandate, the right legislation must be written, applied correctly, it must be effectively and transparently managed by competent officials and supported by sufficient budgeting.

Even with a change to Article 25 allowing expropriation without compensation, land reform will not happen, if the basic problems of lack of a legislative framework, corruption, ability, political will and money do not get attention.

Apart from the High-Level Plan report many other reports point to the same shortcomings.

3.5 The way forward: The National Development Plan gives important direction indicators

There are very successful examples of land reform apart from State initiatives. As a matter of fact, more has been accomplished in the private sector than by State enterprises. Statistics in this regard warrant more emphasis on other models where the private sector is involved. Land reform is a challenge which the government and private sector must address as partners. A unique opportunity to work together as partners is provided for in the National Development

Plan (NDP), launched in 2012.

The manner in which land reform is addressed will have a huge impact on the economy, job creation and food security. The National Development Plan sets the goal of an integrated rural economy based on successful land reform as well as job creation in rural areas. In terms of Vision 2030 the dream is that agriculture can create one million new jobs. To make this dream more of a reality it is suggested that irrigated agriculture is extended, that agricultural sectors and regions with the highest potential for growth and job creation are supported and that creative solutions and strategies are developed to stimulate job creation in agricultural industries. The National Development Plan (NDP) is divided into thirteen chapters that address the most pressing challenges facing South Africa and provide solutions to these challenges in the form of proposals and actions.

Government alone cannot provide a decent standard of living; it requires determined and measurable actions from all social actors and partners across all sectors in society. Chapter 6 of the National Development Plan (NDP) suggests that the state and private sector form partnerships to stimulate economic growth in rural areas and to make land reform successful.

Set aside critique, the NDP with the Constitution, still remain the most unifying document in South Africa.

Economic development has become one of the key issues in South Africa, particularly with the financial downgrades by ratings. The NDP places “an integrated and inclusive rural economy” (Chapter 6) at the centre of analysis and outlines the importance of land reform and rural development as an economic growth tool. Accelerating land reform is pertinent to achieving socio-economic transformation, including eliminating poverty and reducing inequality.

The National Development Plan 2030 (NDP) asserts that communities at the peripheries of society remain in a poverty trap. This rings particularly true for communities settled in rural areas. The NDP highlights that a primary challenge for fostering rural development has been the disproportionate rate of marginalisation, inequality and poverty that rural people face. To promote rural development, the NDP advocates for “agricultural development based on successful land reform”.

The suggested land reform model on page 207 of the National Development Plan proposes that each district municipality with commercial farming land in South Africa should convene a district land committee consisting of all agricultural landowners in the district, including key stakeholders such as the private sector, bankers, government and government agencies. This committee will then be responsible for identifying 20% of the commercial agricultural land in the district, and giving

the commercial farmers the option of assisting in its transfer to black farmers. The writers of Chapter 6 of the NDP then proceed to suggest a possible manner for the financing of the land and transfer thereof to black owners. The National Development Plan also provides that the government gives recognition to commercial farmers who cooperate and contribute to transfer land to black producers and who remain involved to ensure the success of the new farmers. The manner in which the land is procured and transferred to black farmers is discussed as one of many possibilities.

Addressing tenure security for farmers is vital to rural agricultural development. As already

highlighted, insecure land tenure has an impact on agricultural production and may hinder the NDP's vision of "rural communities having better opportunities to participate fully in the economic, social and political life of the country" by 2030. The NDP affirms that creating tenure security is necessary to expand agriculture and bolster food production.

In the private sector many agricultural producers in South Africa are already involved with or willing to proceed with the implementation of land reform projects. All that is needed to expedite this process is an undertaking from government that they will receive recognition as provided for in the NDP. An example of agricultural producers' willingness to implement land reform, is Witzenberg PALS (Partnerships in Agri Land Solutions).

Witzenberg PALS launched an initiative to expedite land reform in the Witzenberg area (Ceres, Tulbagh, Wolseley, Breederivier, Koue Bokkeveld, Ceres Karoo). This initiative was launched as partnership between all the agricultural producers, Witzenberg Municipality and community leaders.

It was agreed to expedite land reform in a unique way to support economic growth, job creation and social harmony. The aims are to establish successful black farmers, to involve the whole community in an inclusive process, to extend the initiative to other areas and agri related activities, to establish the Witzenberg Centre as "one stop shop" and to focus on training and mentorship.

The mentorship and training are integral to and of utmost importance to secure positive outcomes. The PALS framework was developed in line with the principles of the NDP. There are various viable initiatives and models that can be learned from.

The Dutch Reformed Church would in conclusion like to make the following specific proposals:

- Optimise the solutions that are already catered for in the frameworks provided by the Constitution (1996), the NDP (2017), Operation Phakisa for Agriculture Land Reform and Rural Development (2017), and various private sector plans.
- The real reasons for the slow pace of land reform must be addressed as stipulated by the High-Level Plan (2017).
- Implement the High-Level Plan's recommendations, especially the passing of a Land Framework Law.
- Test the expropriation powers contained in the Constitution with reference to Article 25.
- Get consensus on land audit figures.
- State owned land needs to be made available for the housing of the poor.
- Support for upcoming and communal farmers.
- Sustainable financing models.

- Acknowledging and the use of successful partnership models.

The Dutch Reformed Church is convinced that a new emphasis on land reform is important. When considering a country as economically unequal as ours, it is obvious that economic transformation must occur. It is surely among the issues that matter most. One thing is clear: until poor South Africans own their homes, be they in cities or rural areas, development will stall. Comprehensive land reform that promotes extensive cultivation of every hectare, while resolving land rights issues under all tenure systems, can transform agriculture and enhance economic prospective. Such initiatives can open new markets and employ many South Africans living in rural areas. It can also enhance food security. Legal land distribution and rural development are crucial economic growth tools for poverty reduction, especially in the wake of South Africa's Gini coefficient which is the worst in the world.

Warmest regards

A handwritten signature in black ink, appearing to read 'GF Claassen', with a long horizontal flourish extending to the right.

Dr GF Claassen
GENERAL SECRETARY