

Voluntary Report – Voluntary - Public Distribution

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Report Name: Proposed Amendments to the South African Constitution to Allow for the Expropriation of Land Without Compensation Fail

Country: South Africa - Republic of

Post: Pretoria

Report Category: Agricultural Situation, Agriculture in the News, Agriculture in the Economy, National Plan

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Report Highlights:

On December 7, 2021, South African Parliament failed to pass the proposed amendments to Section 25 of the Constitution which would have allowed for the expropriation of land without compensation. This decision has been met with mixed reactions from the agricultural sector, with the larger commercial agricultural associations (with majority white membership) and the banking sector expressing relief, while associations representing black farmers have generally expressed disappointment. Some opposition political parties have indicated that this matter will still be pursued, and there are possibilities that the debate on expropriating land without compensation may be revived when Parliament considers a different expropriation bill not aimed at land reform.

Sources:

Agricultural Business Chamber - <https://www.agbiz.co.za/>
AgriSA – <https://agrisa.co.za/>
African Farmers Association of South Africa - <https://afasa.org.za/>
Parliament of South Africa - <https://www.parliament.gov.za/>
Banking Association of South Africa - <https://www.banking.org.za/submissions/>

Background:

On December 7, 2021, South African Parliament failed to pass the proposed amendments to Section 25 of the Constitution to allow for the expropriation of land without compensation. Parliament, which is led by the African National Congress (ANC), South Africa's majority ruling political party, failed to secure the two-thirds of parliamentary votes required to pass this amendment. Previous Post comments and detailed information on the process may be found on the following GAIN reports ([Constitutional Amendments to Expropriate Land Without Compensation Moving Ahead \(SF2019-0038\)](#) and [South Africa Considering Expropriating Land Without Compensation \(SF2018-3452\)](#)). The failed draft bill to amend Section 25 of the South African Constitution, to allow for the expropriation of land without compensation may be found on the following link, https://www.parliament.gov.za/storage/app/media/CommitteeNotices/2019/december/06-12-2019/Draft_advertised.pdf.

Mixed Reactions from the Agricultural Sector

As expected, the news yielded mixed reactions from various stakeholders in the agricultural sector. Agricultural stakeholders' views were shared with the Parliamentary Constitutional Review Committee through submissions and presentations during the consultation process.

Associations such as African Farmers Association of South Africa (AFASA) and Women on Farms Project that primarily represent the interests of black farmers have always supported expropriation of land without compensation to speed up land redistribution and land reform. While the statistics on land ownership by race is highly contested in South Africa, the [Land Audit Report of 2017](#) remains one of the key recent research reports that is referenced on this issue. According to the [Land Audit Report of 2017](#) agricultural land ownership patterns in South Africa are skewed towards whites, with about 72 percent of the total agricultural land owned by whites as shown in **Table 1**. This remains one of the major issues and possible reasons for the debate on land expropriation without compensation.

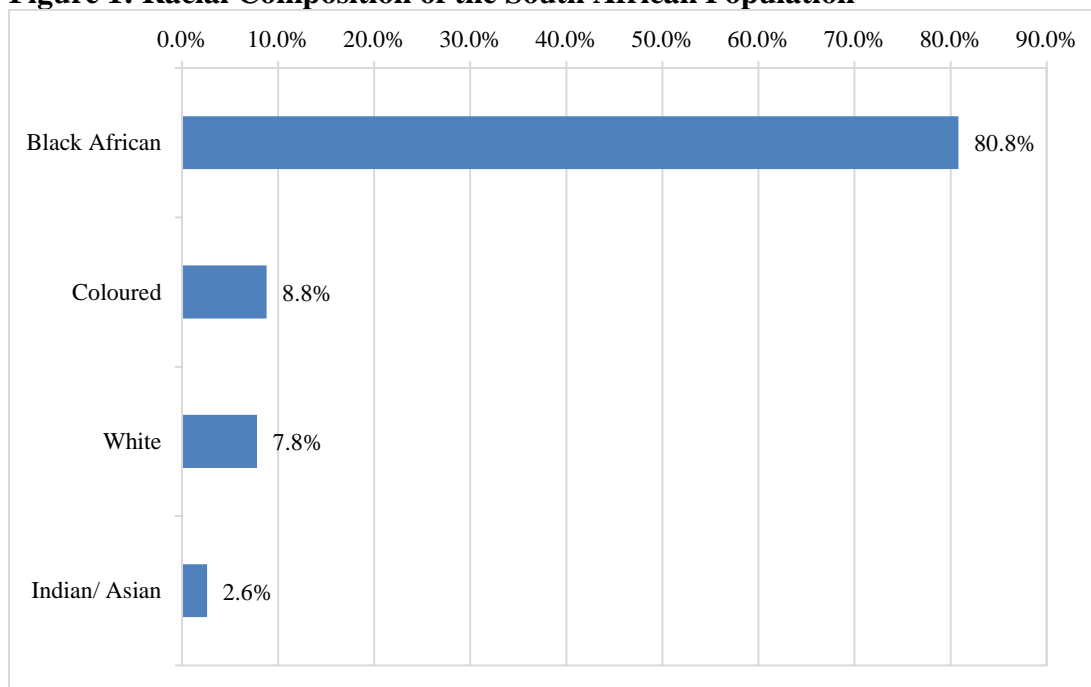
Organizations that have supported expropriation without compensation argue that previous land reform programs such as the “willing buyer/seller” method were ineffective, and most of the available land was deemed unproductive and marginal land. In addition, these organizations argue that genuine intention or political will to address the skewed land ownership question has been lacking. Thus, amending Section 25 was viewed by these associations as an option to allow for government to proceed with land reform in an expedited manner. The failure by Parliament to amend Section 25 of the Constitution to allow for the expropriation of land without compensation has been met with disappointment by most associations representing the interests of black farmers.

Table 1: Agricultural Land Ownership by Race and Province

Province	White		African		Colored		Indian		Other		Co-own		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	Ha
Eastern Cape	3,007,709	65%	250,536	5%	773,026	17%	385,685	8%	151,849	3%	42,723	1%	4,611,528
Free State	3,748,192	75%	153,080	3%	646,872	13%	246,453	5%	193,548	4%	21,119	0%	5,009,264
Gauteng	275,021	59%	30,266	7%	81,597	18%	51,332	11%	15,925	3%	8,528	2%	462,669
Kwa-Zulu Natal	853,152	53%	270,423	17%	248,286	15%	107,723	7%	72,033	4%	65,875	4%	1,617,493
Limpopo	1,139,454	65%	180,858	10%	220,738	13%	115,588	7%	73,174	4%	20,165	1%	1,749,977
Mpumalanga	967,634	67%	108,792	8%	219,792	15%	83,580	6%	41,702	3%	19,652	1%	1,441,152
North-West	2,408,880	73%	198,279	6%	397,552	12%	119,744	4%	114,219	3%	72,536	2%	3,311,210
Northern Cape	11,498,449	77%	69,350	0%	2,222,206	15%	746,820	5%	414,065	3%	60,112	0%	15,011,002
Western Cape	2,764,652	72%	53,287	1%	561,315	15%	174,865	5%	195,047	5%	114,827	3%	3,863,994
Total	26,663,144	72%	1,314,873	4%	5,371,383	14%	2,031,790	5%	1,271,562	3%	425,537	1%	37,078,289

Source: [Land Audit Report of 2017](#)

Figure 1: Racial Composition of the South African Population



Source: <http://www.statssa.gov.za>

Associations such as Agbiz and AgriSA, which primarily represent the commercial agricultural sector (with majority white membership), have welcomed the failure by Parliament to amend Section 25 of the Constitution. Some commercial growers farming on land with title deeds have also expressed relief and welcomed this development. One of the primary reasons expressed by the commercial agricultural associations for their opposition to this amendment is the impact of such a policy on long-term agricultural investments and consequently possible decline in agricultural production. Notably, commercial farmers account for an estimated 75 – 80 percent of the total agricultural production in South Africa. As a result, the expropriation of land without compensation is argued to be a risk to food security and the economy.

Despite opposing the amendment of Section 25 of the Constitution, the commercial agriculture sector has publicly acknowledged the importance of having a successful land reform program to address the injustices of the past, reduce inequality, and to promote social stability in South Africa. The commercial associations state that land reform should be implemented within existing programs and legislation. These associations advocate for addressing land reform through allocating adequate budgets to existing land reform initiatives, and addressing corruption and the lack of political will associated with those programs.

The Banking Association of South Africa (BASA), various private banks, and the state owned Land Bank previously warned that land expropriation without compensation could pose a significant risk to the banking sector (<https://www.banking.org.za/news/banks-speak-out-on-land-expropriation/>). The current exposure banks have in relation to land-based property is approximately R1.613 trillion (US\$100 billion) in the form of mortgages. The banking sector is also estimated to have advanced at least R180 Billion (US\$11 Billion) in debt or secured loans to the agriculture sector based on land titles as collateral. As a result, the banking sector welcomed the recent developments based on the risks and consequences to the banking sector and economy of expropriating of land without compensation.

Post Comments

While most advocates for the protection of property rights have welcomed Parliament's decisions not to amend Section 25 of the Constitution to allow for the expropriation of land without compensation, it is uncertain if this marks the end of the debate on this matter. Some opposition political parties have indicated that this matter will still be pursued. Furthermore, the debate on expropriating land without compensation may be revived when Parliament considers the [Expropriation Bill, 2020](#). The Expropriation Bill is different from the recently concluded process that sought to amend Section 25 of the Constitution as it does not, in its current form, seek to address land reform. This bill would update the existing [Expropriation Act 63 of 1975](#) to provide regulations relating to the expropriation of property including land for a public purpose or interests, such as for building infrastructure, industrial development etc. Post published the following GAIN report addressing this bill, [South Africa Proposes New Expropriation Law \(SF2020-0060\)](#).

The impact of the debate and failure by the South African Parliament to amend Section 25 of the Constitution essentially allows for the continuation of the status quo and is not expected to affect agricultural trade and production. Post will continue to monitor the progress on the matter and other related legislation, specifically on how they may impact the South African agricultural sector and trade with United States.

Table 2: Related GAIN Reports:

Report	Link
Constitutional Amendments to Expropriate Land Without Compensation Moving Ahead (SF2019-0038)	Download
South Africa Considering Expropriating Land Without Compensation (SF2018-3452)	Download
South Africa Proposes New Expropriation Law (SF2020-0060)	Download
The South African Government confirms collaboration with organized agriculture on land reform (SF2018-3537)	Download
Draft Regulation of Agricultural Landholdings Bill (SF2017-2392)	Download
South Africa land reform policy update (SF2014-3352)	Download

Attachments:

No Attachments.