

14th February 2020

The Concerned Clergy Western Cape (CCWC) is a registered NPC-K2018330999 which aims to address the issues concerning the church, including issues of unrighteousness and injustice in South Africa.

The following is the submission of the CCWC to Parliament concerning "Constitution Eighteenth Amendment Bill" - The amendment of section 25 of the Constitution about the Expropriation of Land Without Compensation.

This current response is supplementary to our June 2018 submission, and comes to you after having read the Final Report of State President's Panel on Expropriation without Compensation, the draft of the above-mentioned Bill on Expropriation and after various discussions with the Clergy of the CCWC and others.

1. PREAMBLE

Firstly, as followers of Christ, from Whom all Justice originates and whose Cross, as the symbol of Christianity, represents God's commitment to Justice, we have to own that the first Christians in this land failed to present a true reflection of justice in the type of Gospel which they brought to the southern tip of this continent.

Especially around the issue of land. Subsequently others, also claiming to be "Christians", compromised their proclaimed values in the oppressive aspects of Colonialism, particularly in the area of justice (eg. the land Act of 1913, etc) ...but there were

notably other Christian believers who remained true to justice as a necessary outworking of the Gospel of liberty which they preached. (E.g. It was the missionaries, mainly in the E. Cape, who led the fight for justice in the treatment of farm labourers and then led the fight for, resulting in, the Emancipation of slaves).

And again, in the huge sin of Apartheid, it took justice-honoring Christians to be prominent in the struggle to resist their fellow believers who had fallen into that great error of imposing this false doctrine upon the nation, illegitimately dispossessing others on the basis of racial identity.

So we, as spiritual leaders in a Church, representing one of the pastoral leadership teams of the Church of Jesus Christ in South Africa, (who are the vast majority of the nation), today also stand on the side of the dispossessed and are unshaken in our conviction that some Restitution of land should take place to the satisfaction of the majority of the descendants of those dispossessed. And that until this happens we believe that full Reconciliation cannot yet be pronounced to be something broadly authentic among us as a nation.

The South African Land Policy of 1997 states that: The purpose of the Land Redistribution Programme is to provide the poor with land for residential and productive purposes in order to improve their livelihoods.

And so now, in view of the need for urgent and accelerated land reform, in order to address the injustices of the past that were inflicted on the majority of South Africans and especially as the need for land amongst the dispossessed is palpable, we are disappointed that very little has been done to redress the skewed land ownership pattern even in the light of our current Land reform policies.

We therefore support the Expropriation of Land (in some cases without compensation) in the pursuit of justice and for the benefit of the majority of the country. But we do so only under conditions where it can be guaranteed that all unjust means of expropriating and redistributing land are diligently avoided. Thus we are keen to see that such an error of injustice as we have seen in Zimbabwe, which is not all that dissimilar, in injustice and arbitrariness, to that of the previous regime in SA, will not be perpetrated against the majority of this country. And thus by using a just cause as an excuse, a few powerful elite would benefit instead of benefiting the poor and marginalised in this Beloved Country.

Also as followers of Christ, like the authors of the American Declaration of Independence, we hold it to be "self evident" that our Creator exists and therefore add that it is also thus self-evident that all the land in this nation is ultimately His. And that whoever "owns" the land currently, or in future, does so more as a steward of the land on God's behalf, rather than as an independent owner in only his/her own capacity. The question now is, who are the stewards to whom God is giving these lands today? And whoever this turns out to be, we are eager to believe they

will have been chosen by God for the benefit of the majority, whose interests include such matters as each person/family owning a home with some land to care for, the proper care for all the land in question, food security and the dignity of labour, etc. And the following further points are our submission for this proposed discussion:

2. PROPOSALS AND VOTE

We therefore propose:

1. That the exciting opportunities of returning indigenous farmers to the skills of successful and productive farming be eagerly embraced. Hopes of aspiring indigenous farmers (whose successful antecedents Sol Plaatje reminds us of in the following quote) being successful are not, as some would have us believe, unrealistic despite the challenges.:

“In the harvest of 1911, there was panic among white farmers because an African had garnered 3000 bags of maize and one thousand six hundred of wheat... where their neighbours reaped only 300 to 400 bags...”.

This story demonstrates the capacity the African people have in transforming land with its resources for economic purposes.

2. That as is pointed out by Dr Simon Hull in his article - <https://www.dailymaverick.co.za/article/2020-01-16-the-land-bill-is-a-curates-egg-and-right-now-its-a-bit-scrambled/> - we welcome the wording of the proposed bill to allow “land and any other improvements thereon” to be expropriated “for the purposes of land reform” rather than for the expropriation of “property” as it currently stands, thus allowing for the interpretation of any property that is. not limited to land reform.
3. That fresh discussions are based around the “Final Report of The State President’s Advisory Panel”, which appears to us to be a thorough and well researched and well thought-through approach to Expropriation without Compensation. We found this document very helpful with the exception of, in our view, an inadequate and partial assessment of the churches and their missions’ acceptance and reception of land which had been distributed by the government of the day. And especially of their report showing, in our view, a woeful lack of recognition of the facts surrounding the missionaries’ generally positive usage of land (eg. setting up hospitals, schools and universities, etc on behalf and for the benefit of the mainly poor communities which they were in and were serving at the time). Aside from such points of disagreement, this Panel’s Report, we feel, should be the basis of the further discussion which we are proposing.

4. As per our previous submission to Parliament, where the CCWC stressed that this whole process will need mediation. We want now to stress that we see such mediation as a way to ensure that the transfer of land ownership really does include the poor and previously landless as deed-holders rather than that all or most of the land to be redistributed should fall under the ownership of a corrupt political and commercial elite. We have noted recent reports of over 100 Billion Rand having been stolen (from this population, the majority of whom are poor) over the last 10 years or so, under this government's supervision. We therefore insist that it is essential that in the current atmosphere of uncertainty about corruption in government circles and about the untrustworthiness of too many Government representatives, that trustworthy independent members of Civil Society and the Courts be appointed to both monitor the process and mediate wherever there are disputes. A poll done a couple of years ago, showed then that the majority of the population placed the Church high in their estimation of most trusted institutions in SA. And we suggest that as the vast majority of this country espouse Christian values, that therefore church leaders of proven reliability in integrity be included throughout this mediation process. We believe this will help regain the confidence of the population. We as CCWC members wish to remind this Committee that Mediation under a peaceful redistribution/restitution process, as it was done in Norway, Uganda, Rwanda and D.R.C. is a way to avoid disputes getting to the place of needing a Court proceeding for them to be resolved.
5. That since this is a ground-breaking initiative, with not many successful precedents, we urge that nothing be done which subsequent governments and generations will have the opportunity to point to as an unjust or unfair process and find legal loopholes in this noble cause, that then have to be unpicked and re-written, once more providing further opportunities to rob the poor.
6. That reasons for the failure of the existing Land Reform policies of our government be more thoroughly addressed before proceeding. Recent attempts of Government since 1994, to hand over land from existing farmers to aspiring new inexperienced farmers has generally not worked out at all (See the State President's panel report). Alongside the fact that in this generation, a desire to farm, let alone a resilient commitment to it, may be a lot rarer than in previous generations, one of the key reasons for the abovementioned failure, we believe, is that existing farmers have often learned to farm "at their fathers' knee, who had previously learned it at his father's knee...", etc. So, it is not just an occupation but a life-style. Existing (mainly white) farmers should therefore be incentivised to pass on their skills, contacts and access to markets, etc, to those new farmers keen to learn who have been screened as capable and reliable. A particular point of interest is pointed to in the Report of the State President's panel, as a way to resolve this matter, that we were particularly keen to draw everyone's attention to.

And this is that currently there are a growing number of these existing farmers who are keen to take part in schemes where aspiring farmers (mainly coloured and black, (often) former labourers foremen or managers) are given shares in the farms where they are being trained, in order to take over a part of the farm on their own where they would then have a majority shareholding and where the existing farmer continues to have a share, as an incentive to make sure the venture succeeds. Obviously time-scales, progress targets, etc will have to be closely monitored and managed (and mediated as mentioned above) closely.

7. That together with the reservation which Dr Simon Hull raises in his article in the Daily Maverick (see above link), we also would like more clarity on the “Special circumstances” in subsection 3A of the proposed bill before this process is allowed to continue. This being another reason for “pressing the pause button” on this whole process as we call for below:
8. That therefore, with these above-mentioned objectives in mind, we urge that the current process of passing a law to amend the Constitution be paused and placed on hold until more open discussions can take place. And until open invitations to all the appropriate (see below) role players and arbiters go out to choose mediators of integrity are put in place to oversee this crucial project. **For this and the above reasons we will vote against the current passage of this Bill to amend the Constitution until the right safe-guards are in place so that Expropriation doesn't become Misappropriation..**
9. That the opportunity in this new legislation to deal with our major problem of unemployment should be grasped with both hands. The chance of the provision of the dignity of honest and rewarding labour, in a nation where joblessness is our greatest physical challenge, is a huge one and we say that this should be the long-term goal (i.e for fulfilment in the next generation). And so, while not excluding large-scale commercial farming, the goal must always be the restoration of the majority to the lands, whether in rural, urban or peri-urban areas.
10. Finally (and especially in the light of the NEC of the ANC's recent statement on Expropriation) we strongly urge and insist that the final arbiter in all the above matters, is not left in the hands of the Executive part of government but rather the Judiciary. Of course, too great an involvement, early on in any dispute, should be avoided (It seems to us that the poor are less likely to afford lengthy disputes in our current judicial process). It also seems that currently there is a mix of confusing and even contradictory legislation in place. (For example, we gather that Act 63 of 1975 gives too much power to the Executive rather than the courts and those better qualified legally and Constitutionally, need to put our and the peoples' minds at rest on such matters, if it is true before proceeding). Thus all matters including disputes

and such matters as: Which land is expropriated? How much compensation is awarded? Who are to be the beneficiaries?, etc, we urge must be up to the power of the Courts to finally decide rather ultimately residing with the Executive. This is especially so, when other means like mediation as proposed above, have failed. And so we hold that any legislation currently in place, anticipated or proposed, which gives this kind of ultimate authority away to the Executive of Government rather than leave it to the Judiciary, needs to be definitely and unequivocally resisted and legislation amended or changed accordingly.

With Kind Regards,
The CCWC Executive team

**Signed: The Rev Barry Isaacs (Chairman) and Bishop Mark Bloemstein
(Secretary)**