COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: **2024-143265**

In the matter between:

NELSON MANDELA FOUNDATION TRUST	Plaintiff / Applicant / Appellant
and	
SPEAKER OF THE NATIONAL ASSEMBLY,CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES,PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA,MINISTER OF LAND REFORM AND RURAL DEVELOPMENT	Defendant / Respondent

---

Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 5/12/2024 at 3:17:37 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

Private Bag X9020, Cape Town 8000

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

ELE ALLY SIGNED BY:

Registrar of The High Court, Western Cape Division, Cape Town

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO 2024/143265

In the matter between:

NELSON MANDELA FOUNDATION TRUST	**APPLICANT**
and	
SPEAKER OF THE NATIONAL ASSEMBLY	**1ST RESPONDENT**
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	**2ND RESPONDENT**
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**3RD RESPONDENT**
MINISTER OF LAND REFORM AND RURAL DEVELOPMENT	**4TH RESPONDENT**

NOTICE OF MOTION

TAKE NOTICE that the applicant will apply to this Court, on a date to be determined by the Registrar, for an order in the following terms:

1. It is declared that the State has failed to discharge, diligently and without delay, its obligation under section 25(5) of the Constitution to take reasonable legislative and other measures, within its available resources, to foster conditions to enable citizens to gain access to land on an equitable basis.

2. The respondents are directed to ensure that national legislation is enacted within 18 months, addressing at least the following issues:

2.1 the definition of “equitable access” to land;

2.2 how land is to be identified and acquired;

2.3 how beneficiaries are to be selected and supported;

2.4 multiple land uses; and

2.5 integration with other elements of land reform.

3. The respondents are directed to report to the Court every three months regarding the steps taken to pass such legislation.

4. To the extent, if any, that the Provision of Land and Assistance Act 126 of 1993 and the Spatial Planning and Land Use Management Act 16 of 2013 constitute national legislation passed pursuant to section 25(5) of the Constitution, they are declared to be inconsistent with section 25(5) of the Constitution, unconstitutional and invalid to the extent that they fail to address the issues listed in paragraphs 2.1 to 2.5 above.

5. This order is referred to the Constitutional Court for confirmation under section 172(2)(a) of the Constitution.

6. The costs of this application shall be borne by any parties opposing it, jointly and severally, including the costs of one counsel on Scale C and two further counsel on Scale B.

TAKE NOTICE FURTHER that the founding affidavit of **MBONGISENI BUTHELEZI** will be used in support of this application.

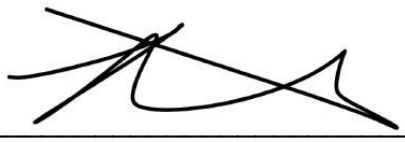
TAKE NOTICE FURTHER that the applicant has appointed **RUPERT CANDY ATTORNEYS INCORPORATED, C/O GOLIATH & COMPANY** as its attorneys of record, at whose addresses, set out below, it will accept service of all documents in these proceedings.

TAKE NOTICE FURTHER that if you intend to oppose this application, you must:

a) within 10 days of receipt of this application, notify the applicant's attorneys of such intention in writing, and in such notice appoint an address at which you will accept service of all documents in these proceedings; and

b) within 15 days of delivering such notice, deliver your answering affidavit.

DATED AT JOHANNESBURG ON THE 5TH DAY OF DECEMBER 2024.



RUPERT CANDY ATTORNEYS INC.
Attorneys for the Applicant
Office 04-05, 12th Floor, The Forum
2 Maude Street
Sandton
Tel: 010 600 8821
Per e-mail: rupert@rupertcandy.co.za
michaela@rupertcandy.co.za
kiara@rupertcandy.co.za
Ref: R Candy/MH/KD/N0012
c/o GOLIATH & COMPANY
1st Floor
218 Buitengracht Street
City Centre
Cape Town
Ref: E. Goliath

TO: **THE REGISTRAR**
High Court of South Africa
Western Cape Division
CAPE TOWN

AND TO: **SPEAKER OF THE NATIONAL ASSEMBLY**
First Respondent
Room S38, Parliament Building
Parliament Street
Cape Town

AND TO: **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**
Second Respondent
Room S11, Parliament Building
Parliament Street
Cape Town

AND TO: **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
Third Respondent
Tuynhuys
Plein Street
Cape Town

AND TO: **MINISTER OF LAND REFORM AND RURAL DEVELOPMENT**
Fourth Respondent
Room 133
120 Plein Street
Cape Town

AND TO: **STATE ATTORNEY, CAPE TOWN**
Liberty Life Centre, Floor 4
22 Long Street
Central
Cape Town

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: **2024-143265**

In the matter between:

NELSON MANDELA FOUNDATION TRUST	Plaintiff / Applicant / Appellant
and	
SPEAKER OF THE NATIONAL ASSEMBLY,CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES,PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA,MINISTER OF LAND REFORM AND RURAL DEVELOPMENT	Defendant / Respondent

---

Founding Affidavit

NOTE: **This document was filed electronically by the Registrar on 5/12/2024 at 3:36:45 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

ELECTRONICALLY SIGNED BY:

Registrar of The High Court, Western Cape Division, Cape Town

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO 2024/143265

In the matter between:

NELSON MANDELA FOUNDATION TRUST	**APPLICANT**
and	
SPEAKER OF THE NATIONAL ASSEMBLY	**1ST RESPONDENT**
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	**2ND RESPONDENT**
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**3RD RESPONDENT**
MINISTER OF LAND REFORM AND RURAL DEVELOPMENT	**4TH RESPONDENT**

FOUNDING AFFIDAVIT

Table Of Contents

I, the undersigned,

MBONGISENI BUTHELEZI

hereby state under oath:

1. I am a major male of full legal capacity, employed as the Chief Executive Officer of the Nelson Mandela Foundation Trust ("**the Foundation**"), at 107 Central Street, Houghton, Johannesburg. I am duly authorised to depose to this affidavit and to institute this application on the Foundation's behalf.

2. The contents of this affidavit are within my personal knowledge or arise from the consideration of documents at my disposal, unless indicated to the contrary, and are, to the best of my knowledge and belief, both true and correct.

3. Given the nature of this application – a constitutional challenge – it is necessary for me to advance submissions of a legal nature, which are made on the advice of the Foundation's legal advisors and representatives.

INTRODUCTION

4. This application is a constitutional challenge against the State's failure to comply, diligently and without delay, with section 25(5) of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**"), which provides:

> **The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.**

5. This provision requires the State inter alia to enact legislation to foster conditions which enable equitable access to land. Some 27 years later, the State has still failed to enact any such legislation.

6. This application is aimed at compelling the State to do so without further delay.

7. By "**the State**", in the context of this application, we refer to:

7.1 Parliament, which has the authority to enact national legislation, by passing Bills either initiated by Parliament itself, or prepared and introduced by the National Executive; and

7.2 the National Executive, which has the authority to prepare and initiate Bills to give effect to constitutional obligations.

8. The Foundation seeks an order inter alia:

8.1 declaring that the State has failed to discharge, diligently and without delay, its obligation under section 25(5) of the Constitution;

8.2 directing the State to:

8.2.1 ensure the enactment, within 18 months, of national legislation that addresses at least the following issues:

8.2.1.1 the definition of "equitable access" to land;

8.2.1.2 how land is to be identified and acquired;

8.2.1.3 how beneficiaries are to be selected and supported;

8.2.1.4 multiple land uses; and

8.2.1.5 integration with other elements of land reform;

8.2.2 report to the Court every three months regarding the steps taken to pass such legislation.

9. The remainder of this affidavit will address the following:

9.1 the parties;

9.2 the historical background to section 25(5) of the Constitution;

9.3 the meaning of section 25(5) of the Constitution;

9.4 South Africa's land reform policy framework;

9.5 current legislation on land reform;

9.6 land redistribution since 1994 in numbers;

9.7 reviews and actions commissioned by the State;

9.8 the Foundation's engagements with Parliament;

9.9 how the State has breached section 25(5) of the Constitution;

9.10 minimum elements for reasonable legislation to foster conditions to enable equitable access to land;

9.11 appropriate, just and equitable relief.

THE PARTIES

The Foundation

10. The applicant is the Foundation, an inter vivos trust registered with the Master of the High Court of South Africa under registration number IT 9259/99, and with its principal place of operations at 107 Central Street, Houghton, Johannesburg.

11. The Foundation was established by former President Nelson Rolihlahla Mandela (Madiba) in 1999, shortly after he retired from public office. Its vision is "a society that remembers its past, listens to all its voices, and pursues social justice". Its mission is "to contribute to the making of a just society by promoting the legacy of Nelson Mandela, providing an integrated public information resource on his life and times, and convening dialogue around critical social issues".

12. Since 2018, the Foundation has commissioned research, convened dialogues, supported state-led reviews and has undertaken advocacy work in the area of land reform. This is in line with the purpose that the Foundation has set for itself which is to "mobilise the legacy of Nelson Mandela to create a more just society by dismantling intergenerational poverty and inequity".

13. We consider realising the right to equitable access to land, and more broadly the advancement of land reform, as unfinished business of Madiba. As such, this forms part of the Foundation's responsibility to take up.

14. Against the backdrop of marking 30 years of democracy in South Africa, and 10 years since Madiba's passing, the Foundation believes it is urgently critical that the Constitution becomes a more lived reality for all who live in South Africa. The

mere existence of the Constitution is not what will make the lives of people better but rather the actions taken to give expression to the contents thereof.

15. The persistence of racialised unequal land relations means that, for the majority of South Africans, the legacy of dispossession lives on, and the past is very much the present. Continuing on our current trajectory as a country would mean that we believe that this path is morally preferable compared to any alternative future. The Foundation believes that we as a country can do better and must do better.

16. The Foundation institutes this application in the public interest, in terms of section 38(d) of the Constitution.

17. As the Foundation, we work collaboratively with the State in various capacities and will continue to do so. Instituting this application does not mean that we consider ourselves an adversary of the State, but rather we see it as an action in the public interest and to assist the State in giving effect to the Constitution. We recognise that the State has various competing priorities but we believe that the issue of equitable land access is pervasive and pressing, and can no longer be deferred. The Foundation believes that this application can assist the State in prioritising land redistribution for the benefit of the country.

The respondents

18. The first respondent is the Speaker of the National Assembly, elected in terms of section 52(1) of the Constitution ("**the Speaker**"), cited as the representative of the National Assembly under section 23 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004. The National Assembly is the Lower House of Parliament, elected to represent the people and to ensure

government by the people by inter alia passing legislation, in terms of section 42 of the Constitution. The Speaker's official address is Room S38, Parliament Building, Parliament Street, Cape Town.

19. The second respondent is the Chairperson of the National Council of Provinces, cited as the representative of the National Council of Provinces in terms of section 23 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004. The National Council of Provinces is the Upper House of Parliament, elected to represent the provinces in inter alia national legislative processes, in terms of section 42(4) of the Constitution. The official address of the Chairperson of the National Council of Provinces is Room S11, Parliament Building, Parliament Street, Cape Town.

20. The third respondent is the President of the Republic of South Africa, the Head of the National Executive in terms of sections 83(a) and 85 of the Constitution ("**the President**"). The President's relevant official address is Tuynhuys, Plein Street, Cape Town.

21. The fourth respondent is the Minister of Land Reform and Rural Development, the Cabinet member appointed by the President to be responsible for land affairs ("**the Minister**"). The Land Minister's official address is 120 Plein Street, Room 133, Cape Town.

22. This application will be served on each respondent at their official address, and will also be served on the State Attorney, Cape Town.

HISTORICAL BACKGROUND TO SECTION 25(5) OF THE CONSTITUTION

23. The Preamble to the Constitution proclaims, first and foremost, that "South Africa belongs to all who live in it". The profound import of this declaration cannot be fully understood without a reflection on its history, which reveals that it denotes more than the abstract notion of common nationhood but indeed a material right of full citizenship and common ownership over the natural realm of South Africa itself.

"Awakening on Friday morning, June 20, 1913..."

24. Following the colonial conquests of the preceding centuries, the Government of the Union of South Africa established in 1910 set out to consolidate and formalise the widespread dispossession of land from indigenous South Africans.

25. In November 1910 a committee headed by Mr Henry Burton, the newly appointed Minister of Native Affairs, was appointed and tasked with investigating the native land settlement in relation to the so-called "squatting problem". At the end of its work the committee produced a preliminary bill which included its conclusions, but these lay dormant until the Natives Land Bill was introduced in parliament. The committee agreed with the South African Native Affairs Commission Report which stated that: "The time has come when the lands dedicated and set apart as locations, reserves, or otherwise should be defined and delimited and reserved for the Natives by legislative enactment."

26. It was during this period, and partly in response to these developments, that the African National Congress ("**ANC**"), originally named the South African National

Native Congress, was founded on 8 January 1912, with land equity at the centre of its agenda of petitioning for racial equality.

27. Despite the protestations of the ANC and others, the Natives Land Act 27 of 1913 was enacted, and came into effect on 20 June 1913.

27.1 Section 1 provided that, except with the approval of the Governor-General (which had to be tabled in both Houses of Parliament), no "native" could purchase, hire or acquire land from anyone who was not a "native", and vice versa. Section 5 criminalised contraventions of this prohibition.

27.2 Section 2 established a commission to inquire and report, within two years, on areas where "natives" shall not be permitted to acquire or hire land or have interests in land, and likewise set aside areas reserved for "natives".

28. ANC leader Sol Plaatje wrote at the time: "Awakening on Friday morning, June 20, 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth."

29. The commission's report, which was approved by Parliament, recommended that only 7% of South Africa's land be reserved for "natives", denying them the ability to acquire any rights in the remaining 93%. The 7% was later increased to 13% under the Native Trust and Land Act 18 of 1936.

30. In the interim, the Native Administration Act 38 of 1927 appointed the Governor-General as "supreme chief" of all "natives". It gave him virtually absolute power to order the removal of a whole "native" community from one place to another. This Act became the most powerful tool in the forced removals of Africans from the so-called "white areas" into the areas reserved for them.

31. Together, these statutes and others succeeded in pushing Africans off their land and into perpetual servitude on white-owned farms, mines and other industries.

ANC Africans' Claims in South Africa and Bill of Rights, 1943

32. The focus of the ANC during the 1940s was to deepen the advocacy for freedom and rights to full citizenship for Africans in the same ways as enjoyed by so-called Europeans. The most important document produced at this time was the ANC's Africans' Claims in South Africa of 1943, which consisted of the "Atlantic Charter from the African's Point of View" and a "Bill of Rights". The ANC took advantage of global developments declaring that a post-World War II world would be centred on the principle of territorial self-determination. As this was the position endorsed by the South African government at the time, despite its violation of the freedoms of African peoples, the ANC leadership used the Atlantic Charter to formulate demands specific to the struggles of the African people in South Africa.

33. The ANC Bill of Rights of 1943 contained in this Africans' Claims document demanded, among other things, fair redistribution of the land as a prerequisite for a just settlement of the land problem. It demanded the right to own, buy, hire or lease and occupy land individually or collectively, both in rural and urban areas, as a fundamental right of citizenship. It called for the repeal of the Natives Land Act, the Native Trust and Land Act, the Native Laws Amendment Act, the Natives (Urban Areas) Act and similar legislation. It also demanded that African farmers obtained similar assistance from the State as that which was provided to European farmers, in the form of Land Bank facilities, state subsidies, and other privileges as enjoyed by Europeans.

The Freedom Charter, 1955

34. The proclamation "South Africa belongs to all who live in it" finds its origin in the Freedom Charter, adopted in Kliptown on 26 June 1955 by the Congress of the People, a gathering of the ANC, the South African Indian Congress, the South African Coloured Peoples' Organisation and the Congress of Democrats. The Preamble of the Freedom Charter declared, firstly, that "South Africa belongs to all who live in it", and pledged, among others, that "[t]he people shall share in the country's wealth", that "[t]he national wealth of our country, the heritage of South Africans, shall be restored to the people", and, importantly, that "[t]he land shall be shared among those who work it".

35. Those who attended the Congress of the People and adopted these words were tried for treason, and acquitted after six years of laborious legal defence. Those who persisted in pursuing the achievement of the Charter faced an increasingly intransigent and violent government. Among them was Madiba, who justified his position as follows in his historic statement from the dock during the Rivonia Trial:

> The most important political document ever adopted by the ANC is the Freedom Charter. It is by no means a blueprint for a socialist state. It calls for redistribution… of land… The realisation of the Freedom Charter would open up fresh fields for a prosperous African population of all classes…
>
> Today I am attracted by the idea of a classless society, an attraction which springs in part from Marxist reading and, in part, from my admiration of the structure and organization of early African societies in this country. The land, then the main means of production, belonged to the tribe. There were no rich or poor and there was no exploitation.

36. At the ANC's First National Consultative Conference on 26 April 1969, it adopted the Freedom Charter Revolutionary Programme, unpacking the meaning of the expression "South Africa belongs to all who live in it", as follows:

> The ANC slogan 'Mayibuye iAfrika' was and is precisely a demand for the return of the land of Africa to its indigenous inhabitants. At the same time the [ANC] recognises that other oppressed people deprived of land live in South Africa. The white people who now monopolise the land have made South Africa their home and are historically part of the South African population and as such entitled to land. This made it perfectly correct to demand that the land be shared among those who work it. But who work the land? Who are the tillers?
>
> The bulk of the land in our country is in the hands of land barons, absentee landlords, big companies and state capitalist enterprises. The land must be taken away from exclusively European control and from these groupings and divided among the small farmers, peasants and landless of all races who do not exploit the labour of others. Farmers will be prevented from holding land in excess of a given area, fixed in accordance with the concrete situation in each locality. Lands held in communal ownership will be increased so that they can afford a decent livelihood to the people and their ownership shall be guaranteed. Land obtained from land barons and the monopolies shall be distributed to the landless and the land-poor peasants. State land shall be used for the benefit of all the people. Restrictions of land ownership on a racial basis shall be ended and all land shall be open to ownership and use to all people, irrespective of race.

The "historic compromise"

37. A generation later, in 1992, when the dawn of democracy was in sight, the ANC placed land reform at the forefront of its economic agenda, in the declaration Ready to Govern: ANC Policy Guidelines for a Democratic South Africa:

> Dispossession and denial of rights to land have resulted in the present unequal division of land and landlessness, which will require legislative intervention far beyond the mere repeal of apartheid land laws. Our policies must provide access to land both as a productive resource and to ensure that all our citizens have a secure place to live…
>
> Effective measures to ensure that landless people gain access to land on fair terms … will be introduced by an ANC government as a matter of priority…
>
> The present pattern of land ownership which is the direct result of apartheid laws must be fundamentally changed to address landlessness and land hunger.

38. The ANC Ready to Govern document provided the first and most comprehensive outline of the legislative intervention required to address the unequal division of land and landlessness from colonialism and apartheid. It consisted of a Bill of Rights for inclusion in the South African Constitution, which advocated for *property rights* for the previously excluded majority and *just compensation.* The ANC Ready to Govern document also established *land and agricultural policy* which articulated land reform's triple focus of land restitution, redistribution and tenure security. The document also introduced the legal process to resolve the claims to land and the idea of a land claims court. It also provided a vision for restructuring agriculture, which favoured small-scale and cooperative farming systems, extension of credit and support to all farmers and the protection of farmworkers' rights. Other aspects that the document discussed related to the recognition of the diverse tenure forms, including public land ownership, women's rights to land, urban land policy and nature conservation.

39. With this policy outlook, the ANC entered negotiations for an interim constitution with a draft *Bill of Rights for a New South Africa* in February 1993. Its provisions on land were bold, principled and detailed:

> **Article 12: Land and the Environment**
>
> (1) The land, the waters and the sky and all the natural assets which they contain, are the common heritage of the people of South Africa who are equally entitled to their enjoyment and responsible for their conservation.
>
> (2) The system of property rights in relation to land shall take into account that it is the country's primary asset, the basis of life's necessities, and a finite resource.
>
> **Rights to Land**
>
> (3) South Africa belongs to all who live in it.

(4) Access to land or other living space is the birthright of all South Africans.

(5) No-one shall be removed from his or her home except by order of a Court, which shall take into account the existence of reasonable alternative accommodation.

(6) Legislation shall provide that the system of administration, ownership, occupation, use and transfer of land is equitable, directed at the provision of adequate housing for the whole population, promotes productive use of land and provides for stable and secure tenure.

(7) Legislation shall provide for the establishment of a tribunal for land claims which shall have the power to adjudicate upon land claims made on legal or equitable grounds, and in particular shall have:

(a) the power to order the restoration of land to people dispossessed by forced removals, or where appropriate to direct that compensation be paid, or other suitable acknowledgment be made, for injury done to them;

(b) the power to award particular portions of land, or rights to land, to such claimants, where there are special circumstances arising out of use, occupation or other similar grounds, which make it equitable for such an award to be made.

(8) Legislation shall also make provision for access to affordable land to be given as far as possible, and with due regard to financial and other resources available to the state, to those historically deprived of land and land rights, or deprived of access to land by past statutory discrimination.

(9) All such legislation shall guarantee fair procedures and be based on the principle of achieving an equitable balance between the public interest, including the above objectives, and the interests of those whose existing titles might be affected.

(10) Any redistribution of land or interest in land required to achieve the above objectives shall be subject to just compensation which shall be determined according to the principle of equitable balance between public interest and the interest of those whose existing titles might be affected.

(11) In the case of a dispute regarding compensation, provision shall be made for recourse to an independent tribunal, with an appeal to the courts.

(12) All natural resources below and above the surface area of the land, including the air, and all forms of potential energy or minerals in the territorial waters, the continental shelf and the exclusive economic zone of South Africa, which are not otherwise owned at the time of

coming into being of this Constitution, shall be vested in the state acting as trustee of the whole nation.

(13) The State shall have the right to regulate the exploitation of all natural resources, grant franchises and determine royalties subject to payment of just compensation in the event of interference with any existing title, mining right or concession.

...
(emphasis added)

40. Under the 1993 interim Constitution, the ANC waged and won South Africa's first democratic election on the promise of a better life for all, "giving all South Africans the opportunity to share in the country's wealth, to contribute to its development and to improve their own lives". This election manifesto included a commitment to comprehensive land reform, under the slogan "South Africa belongs to all who live in it".

41. After the adoption of the final Constitution in 1996, this commitment became set in stone, and the "historic compromise"[1] produced a nuanced clause on property, combining individual and collective rights, liberal and social elements. In this unusual way, section 25 of the Constitution at once conjoined the competing interests of the privileged and the underprivileged – the landed and the landless – in a stable, sustainable framework for future progress. Thus, it provided for protection of vested private property rights from arbitrary deprivation and unjust expropriation, while requiring legal recognition of land rights to people who were denied them in the past (tenure security), restitution of land rights to people who were discriminatorily dispossessed of them from 1913, as well as equitable

---

[1] *Certification of the Constitution of the Republic of South Africa, 1996* 1996 (4) SA 744 (CC) ("**First Certification**"), paras 9-10.

redistribution of land among all South Africans. This compromise was also reflected in the allowance for the State to expropriate property in the public interest or for a public purpose, subject to just and equitable compensation.

THE MEANING OF SECTION 25(5) OF THE CONSTITUTION

42. It is in light of this painful history that section 25(5) of the Constitution commands as follows:

> **The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.**

43. Section 25(5) recognises that a large extent of general landlessness and land hunger stemmed from pre-1913 colonial dispossession and apartheid's racially based land laws which could not be resolved by targeting only those who were directly dispossessed post-1913 (for which restitution would be the appropriate response). However, section 25(5) transcends history and is also concerned with contemporary land needs, most of which are connected to the country's racially discriminatory past. It offers a mandate to resolve the pervasive problem of land hunger and land injustice today through redistributive mechanisms.

44. The right in section 25(5) forms part of the "cluster of socio-economic rights enshrined in the Constitution".[2] The rationale for the constitutional entrenchment of these rights was emphasised by the Constitutional Court as follows in the *First Certification* case:

---

[2] *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) ("***Grootboom***"), para 19.

> We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.[3]

45. The particular necessity of entrenching a right of equitable access to land was highlighted by the Constitutional Court in *Tongoane*:

> The forced removals of African people from the land which they occupied to the limited amount of land reserved for them by the apartheid state resulted in the majority of African people being dispossessed of their land. It also left a majority of them without legally secure tenure in land... The Bantu Homelands Citizenship Act, 1970 and the Bantu Homelands Constitution Act, 1971 further entrenched land dispossession as a key policy of the apartheid edifice. African people would, as a consequence, have no claim to any land in 'white' South Africa. African people were tolerated in 'white' South Africa only to the extent that they were needed to provide labour to run the economy... Relentlessly, African people were dispossessed of their land and given legally insecure tenure over the land they occupied... One of the goals of our Constitution is to reverse all of this.[4]

46. In *Haffejee*, the Constitutional Court observed that section 25(5) and the other land related provisions of the property clause "underline the need for the redress and transformation of the legacy of grossly unequal distribution of land in this country. The historical context in which the property clause came into existence should be remembered."[5]

---

[3] *First Certification*, para 8.

[4] *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (6) SA 214 (CC), paras 25-28.

[5] *Haffejee NO and Others v eThekwini Municipality and Others* 2011 (6) SA 134 (CC), para 30.

47. In *Sishen*, the Constitutional Court again emphasised the positive obligations imposed by the property clause:

> A major dispossession of land occurred in 1913 when 13% of the country's land was set aside for the use and occupation of the African majority and 87% of the land was reserved for other races. The Natives Land Act of 1913 was later reinforced by a suite of statutes which advanced the policy of apartheid…
>
> When racist statutes were repealed before the dawn of the democratic dispensation in 1994, the inequalities and imbalances they had caused remained embedded in our society. The Constitution not only rejected the racist policies of the past but it also imposed obligations on the democratic government to take legislative and other measures to address the inequalities caused by racist colonial and apartheid laws.[6]

48. Section 25(5) of the Constitution thus imposes a positive obligation on the State to take "reasonable" legislative and other measures to foster conditions which enable citizens to gain equitable access to land. The corollary right is not only symbolic but enforceable. As the Constitutional Court held in *Grootboom*, which concerned the right to have access to adequate housing:

> Socio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only. Section 7(2) of the Constitution requires the state 'to respect, protect, promote and fulfil the rights in the Bill of Rights' and the courts are constitutionally bound to ensure that they are protected and fulfilled. The question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case.[7]
>
> This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to

---

6 *Minister of Mineral Resources and Others v Sishen Iron Ore Company (Pty) Ltd and Another* 2014 (2) SA 603 (CC), paras 7 and 9.

7 *Grootboom*, para 20.

> land on an equitable basis. Those in need have a corresponding right to demand that this be done.[8]

49. The right contained in section 25(5) requires the state to act reasonably. This, together with the historical account mentioned above, requires that the measures adopted by the State cannot simply be judged on the basis of their rationality – i.e. whether there is a connection between the measure and the outcome sought to be achieved. The measures must also be evaluated by reference to their substantive outcome. It is no use having a "rational" measure if its outcome is the replication of the colonial dispensation of land distribution. If the measure does not produce an outcome which ensures equitable access to land, then such measure fails the reasonableness test embedded in section 25(5). In a related context of section 26, we consider below the jurisprudence of the Constitutional Court.

50. In *Grootboom*, the Court approached reasonableness in the realisation of the right to housing as follows:

> The programme must be capable of facilitating the realisation of the right. The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable. In any challenge based on section 26 in which it is argued that the state has failed to meet the positive obligations imposed upon it by section 26(2), the question will be whether the legislative and other measures taken by the state are reasonable.[9]

---

[8] *Grootboom*, para 93.

[9] *Grootboom*, para 41.

51. This has become the classic formulation of the test for reasonableness. In *Mazibuko*, the Court explained the test further as follows:

> [W]hat the right requires will vary over time and context. Fixing a quantified content might, in a rigid and counter-productive manner, prevent an analysis of context. The concept of reasonableness places context at the centre of the enquiry and permits an assessment of context to determine whether a government programme is indeed reasonable.[10]

52. Accordingly, in the analysis of whether the State has acted reasonably in relation to socio-economic rights, context is of utmost significance. In *Grootboom*, it was found that determining reasonableness required the Court "to consider housing problems in their social, economic and historical context and to consider the capacity of institutions responsible for implementing the programme".[11] The Court held further that the right to housing must be seen as closely related to other socio-economic rights, such as access to land, and that "[t]he state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing".[12]

53. The above reasoning is equally applicable to the State's duty in terms of section 25(5). As explained by Juanita Pienaar and Jason Brickhill, this duty "has both a positive dimension and a negative dimension":

> Although it does not specifically provide that everyone has a right to land, the requirement that the state 'foster conditions which enable citizens to gain access to land' imposes a positive obligation on the state to provide adequate and appropriate assistance to people who do not have access to land. Following *Grootboom*, this obligation may be used to compel the state

---

[10] *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC) ("***Mazibuko***"), para 59.

[11] *Grootboom*, para 43.

[12] *Grootboom*, para 24.

> to act reasonably, especially in relation to meeting the needs of the most vulnerable members of society. At the same time, the duty to 'foster conditions' places the state under a negative obligation to ensure that there are no impediments to the provision of access to land.[13]

54. The latter point – that the State has a negative duty to eliminate and not to impose impediments to land access – is of tremendous significance. In *Grootboom*, the Court stated firmly that this duty is implicit in the obligation to take reasonable measures towards the realisation of socio-economic rights:

> Although the subsection does not expressly say so, there is, at the very least, a negative obligation placed upon the state and all other entities and persons to desist from preventing or impairing the right of access to adequate housing… Access to housing could also be promoted if steps are taken to make the rural areas of our country more viable so as to limit the inexorable migration of people from rural to urban areas in search of jobs.[14]

55. In this respect, Sandra Liebenberg observes that "'preventing or impairing' access to a socio-economic right could well cover policies that constitute a barrier to an individual or a group's attempt to secure access to socioeconomic rights – rather than the mere interference with their existing access to the rights."[15]

56. On this reasoning, any State law or policy that presents a barrier to access to land would represent a violation of section 25(5) of the Constitution.

57. This point was taken further by the late Andre van der Walt. He contended that the Constitution as a whole requires systemic reform of the property regime in

---

[13] Juanita Pienaar and Jason Brickhill, 'Land', in Woolman *et al*, *Constitutional Law of South Africa* (Second Edition), 48.10 to 48.11.

[14] *Grootboom*, para 34.

[15] Sandra Liebenberg, 'The Interpretation of Socio-Economic Rights', in Woolman et al, *Constitutional Law of South Africa* (Second Edition), 33.18.

South Africa. He recalled that the inclusion of the land related rights in section 25 of the Constitution stemmed from the realisation that

> ... the constitutional transformation of property law was not just about the physical redistribution of land, important as that aspect of the land reform programme might be. To be really effective, reforms had to include some systemic and institutional reforms that had nothing to do with the actual transfer of land and, inevitably, systemic and institutional reforms must clearly have some effect on existing land holdings.[16]

58. Van der Walt contended that "policy makers, legislatures and courts therefore have to focus not on upholding individual rights, introducing particular reforms of on reforming specific property institutions, but on the general, systemic features and characteristics of the property system, seen as a whole".[17] The thrust of his argument is as follows:

> These provisions [of section 25] set goals to be achieved through legislation, but they also again indicate which characteristics the property system should display: restitution; security of tenure; equitable access to land and housing. Simultaneously, they indicate the effects that the system of property law should not have: arbitrary dispossession and insecure tenure caused by discriminatory laws and practices; landlessness; homelessness. Importantly, however, the attainment of these desirable characteristics and the avoidance of these unwanted effects in the property system are not simply left to chance: the legislature is specifically and explicitly instructed to make new laws to ensure that property law will have the desirable characteristics and avoid the unwanted effects.[18]

---

[16] Andre van der Walt, *Property and Constitution* (2012), 3.

[17] Id, 27.

[18] Id, 32. See also the argument at 141 that "the primary purpose of the Constitution is not to further entrench or underwrite existing private law protection of extant property holdings by adding another, stronger layer of constitutional protection, but to legitimise and authorise state regulation that would promote constitutional goals or objectives with regard to the overall system of property holdings, proscribe action that would have certain unwanted systemic effects and bring existing law into line with the promotion of these constitutional goals."

59. Some support for this approach may be found in *Grootboom*, where the Court held that:

> … the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the state must take steps to achieve this goal. It means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time. Housing must be made more accessible not only to a larger number of people but to a wider range of people as time progresses.[19]

60. Further support for the imperative of systemic reform is provided in the following paragraphs of *Grootboom*:

> For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to adequate housing in section 26. A right of access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. The state must create the conditions for access to adequate housing for people at all economic levels of our society. State policy dealing with housing must therefore take account of different economic levels in our society.
>
> In this regard, there is a difference between the position of those who can afford to pay for housing, even if it is only basic though adequate housing, and those who cannot. For those who can afford to pay for adequate housing, the state's primary obligation lies in unlocking the system, providing access to housing stock and a legislative framework to facilitate self-built houses through planning laws and access to finance. Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. State policy needs to address both these groups.[20]

---

[19] *Grootboom*, para 45 (emphasis added).

[20] *Grootboom*, para 35-36.

61. To sum up, the meaning of section 25(5) of the Constitution is that the State has inter alia a positive obligation to take reasonable legislative and other measures to bring about a systemic reform of South Africa's immovable property regime.

62. While the State has passed national legislation to give effect to section 25(6) and (7) of the Constitution (land tenure security and land restitution, respectively),[21] it has never enacted, nor even introduced, a Bill to give effect to section 25(5).

63. This is one of the reasons for the enduring land access inequality in South Africa, as explained by Edward Lahiff and Sam Rugege over 20 years ago:

> Section 25(5), on which redistribution is based… has not specifically been legislated for. The existence of a comprehensive and definitive law governing a major policy area has many advantages.
>
> First, the promulgation of such a law generally requires a substantial process of public consultation accompanied by a degree of public debate and mass-media exposure prior to being framed as a Bill. The passage of a Bill through the houses of Parliament, including the relevant portfolio committees, is again an opportunity for rigorous scrutiny and debate.
>
> Second, a comprehensive law of this kind would generally clearly state the aims and objectives of policy and make provision for all aspects of implementation. It can be expected that particular attention will be paid to the roles of different spheres of government and to the rights and obligations of citizens under the Act.
>
> Third, such an Act would be binding on all concerned, including political office holders, state officials and the general public. Departures from the spirit or the letter of the Act could be challenged in Parliament or through the courts. Major changes in policy would require amendments to the law, again subjecting it to scrutiny and debate at various levels.
>
> Fourthly, a comprehensive law could be expected to provide a high degree of certainty around policy matters, both among officials and the general

---

[21] Restitution of Land Rights Act 22 of 1994, Interim Protection of Informal Land Rights Act 31 of 1996, Extension of Security of Tenure Act 62 of 1997, and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

> public, and could therefore be expected to provide a basis for the policy's rational and consistent implementation.
>
> Finally, such a law could contribute towards the integration of land reform policy, by setting out the relationship between restitution, redistribution and tenure reform. The absence of comprehensive legislation has the opposite effect, and this is clearly the case with regard to redistribution policy.[22]

64. A key gap in the legislative framework for land reform, and especially in relation to land redistribution, is the absence of an overarching framework law that guides and directs the programme as a whole, as well as its various sub-programmes. No such law exists at present. An important object of a framework law would be to provide a clear set of principles to guide the detail of policy and programme design, and ensure good governance. The latter crucially includes mechanisms for transparency and accountability.

65. As noted in the Report by former President Kgalema Motlanthe's High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change ("**High Level Panel**"), not only should there be nothing impeding the State from enacting such legislation but there is further a lack of existing jurisprudence in terms of section 25(5):

> While Section 25(1) prohibits arbitrary or discriminatory deprivation of land, there is a safeguard clause to prevent any provision from impeding reform to redress past discrimination:
>
> > 'No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of Section 36(1).'

---

[22] Edward Lahiff and Sam Rugege, 'A critical assessment of land redistribution policy in the light of the *Grootboom* judgment' 6 *Law, Democracy and Development* 279 (2002), 302-303.

This refers to the limitations clause in Section 25(8).

The meaning of Section 25(5) has not in the past 20 years been interpreted judicially; in other words, while other provisions, such as the right to restitution and to secure tenure, have been extensively challenged and adjudicated in the courts, what constitutes adequate measures to 'enable citizens to gain access to land on an equitable basis' has not. There is no existing jurisprudence related to this right.

SOUTH AFRICA'S LAND REFORM POLICY FRAMEWORK

Reconstruction and Development Programme, 1994

66. The Reconstruction and Development Programme ("**RDP**") adopted in 1994 was a socio-economic policy framework designed to address the economic and social inequalities inherited from colonialism and apartheid's discriminatory laws. It was the first comprehensive programmatic expression of the goals of the democratic government, following the ANC's 1992 Ready to Govern document and the 1993 interim Bill of Rights.

67. The RDP outlined the focus of the national land reform programme to be land redistribution, land restitution and tenure security, particularly in the communal areas. The RDP acknowledged that very few black people would afford land on the free market and outlined a mixed approach with a role for both the state and the market in land reform. It envisaged substantial funding by the democratic government for land. The RDP provided for expropriation with compensation in line with the Constitution to acquire land for redistribution, including expropriation of land that was acquired through corrupt or illegal means from the apartheid state. The RDP also addressed the need for land reform to target women, who

had been further marginalised from accessing land by law and custom. Finally, the RDP also proposed a land tax to promote the productive use of land.

68. According to the RDP, the land reform programme was aimed at supplying residential and productive land to the poorest section of the rural population and aspirant farmers to build the economy by generating large-scale employment, increasing rural incomes and eliminating overcrowding, as part of a comprehensive rural development programme. It was the RDP that established the commonly cited 30% target for land redistribution within the first five years of democracy. This target was revised to 2014, and later to 2030. It remains unmet.

69. The RDP White Paper adopted in November 1994 was an official programme of government to implement the reconstruction and development programme. For the Ministry of Land Affairs, it included pilot projects for land redistribution and land restitution. It also established allocations from the RDP fund towards land reform within three years of the democratic government.

70. Based on President Mandela and his Cabinet's considered assessment of the economic crisis at the time, the RDP was discontinued within the first year of its implementation in 1995, when government shifted its priority from a redistributive focus towards economic growth and investment through a Growth, Employment and Redistribution ("**GEAR**") policy framework.

White Paper on South African Land Policy, 1997

71. The 1997 White Paper on South African Land Policy ("**White Paper**") has been the only policy document produced to guide land reform in South Africa since

democracy. (The 2011 Green Paper on Land Reform was not formally adopted as policy.)

72. The White Paper was established after GEAR had been implemented as a macro-economic policy framework for South Africa and endorsed a purely market-based approach through the willing-buyer-willing-seller model as the primary mechanism for land redistribution. Where this was not possible, the White Paper provided for land expropriation at just and equitable compensation in line with the Constitution.

73. However, in practice, the government limited its role to the provisioning of grants and services to the land-needy, who would then purchase the land in the market. This deviated from the Constitution and the RDP's mixed approach of market and non-market mechanisms. The programme was contingent on the willingness of sellers at the price the grant beneficiaries could afford. The decisions on which land was to be sold, especially in the earlier stages, was taken by landowners with no state participation. There have been various iterations of the grant-assisted programme:

73.1 the Settlement/Land Acquisition Grant ("**SLAG**") from 1995 and 2000, which provided a grant of R15,000 (later increased to R16,000) for households with incomes of less than R1,500 per month;

73.2 the Land Redistribution for Agriculture Development ("**LRAD**") from 2000 to 2010, which abandoned the pro-poor bias by targeting a class of African commercial farmers and offering grants at a sliding scale of R20,000 to R100,000 depending on what the beneficiaries were able to contribute;

73.3 the municipal commonage, which gained prominence by 2002, whereby the municipality acquired land to provide access to disadvantaged residents who were primarily livestock owners (this programme was de-emphasised when the focus was placed on ownership transfer to new farmers via LRAD); and

73.4 the current Proactive Land Acquisition Strategy ("**PLAS**") introduced in 2006, which involves the state purchasing land as a 'willing buyer' and keeping it under its ownership, granting long-term leases to beneficiaries as a form of redistribution.

74. For nearly two decades since the introduction of LRAD, there have been numerous critical reflections, by the land and agrarian academic experts at the Institute of Poverty Land and Agrarian Studies ("**PLAAS**") at the University of the Western Cape, on the deviation of government's land redistribution focus from a pro-poor approach espoused in the White Paper towards a form of an 'elite capture' that has privileged 'commercial viability' of projects. As stated in the PLAAS Equitable Access Report in 2021:

> South Africa's land redistribution has metamorphosed into a pro-elite programme, reflecting the predominant class interests, especially the convergence of landowners, agribusiness, the nascent class of black commercial farmers, and state bureaucrats interested in the stability of the sector around the agenda to deracialise commercial farming, in lieu of far-reaching, comprehensive transformation (Hall, 2004).

75. The weaknesses in the Provision of Land and Assistance Act 126 of 1993 (the "**Provision Act**" or "**Act 126**"), in terms of defining who should benefit from land redistribution and the wide discretionary powers that this Act affords the Land

Minister in terms of allocation of resources, are among the reasons why, according to PLAAS, this shift from pro-poor to elite capture has been possible.

76. According to PLAAS, in the absence of an appropriate law governing land reform and clearly outlining the principle of equity, there is growing evidence that the major beneficiaries of land redistribution are the wealthy, non-farmers, and the politically connected.

77. A noteworthy proposal reflected in the RDP and the White Paper was a rural land tax as a non-confiscatory form of land reform. The proposed tax would raise tax revenues, promote the productive use of land, disincentivise speculative holding of land, and make land more affordable. While the Katz Commission investigated the feasibility of a rural land tax and recommended against it, the Department of Land Affairs criticised and rejected this recommendation. In 2018, the Davis Tax Committee, investigating the feasibility of a wealth tax in South Africa, made positive observations concerning a land tax as follows:

> In summary, recurrent taxation of immovable property is argued to be one of the most efficient forms of taxation from an economic perspective because it does not distort labour supply decisions, has a smaller effect on investment decisions than income tax and is difficult to avoid. The tax system can also be made progressive through rebates and differential tax rates. From a purely theoretical perspective then, the case for taxing land is very strong.

78. It is unclear why the possibility of a land tax has never been taken further by the government.

CURRENT LEGISLATION ON LAND REFORM

Provision of Land and Assistance Act 126 of 1993

79. The Provision Act aimed to give the Minister the power to acquire and designate state land under their control and to develop it for purposes of small-scale farming, residential, public, community, business or similar purposes, by way of providing financial assistance to persons settled on land.

80. While it is an apartheid-era law, passed by the National Party government during its own limited and pre-emptive attempts at land reform, it remains the only law that empowers the National Executive to appropriate funds for disbursement as land purchase grants or subsidies, and for direct state expenditure on land acquisition, settlement services and production support. It has been amended twice, in 1998 and 2008, and was renamed the Land Reform: Provision of Land and Assistance Act.[23]

81. The most substantial amendments related to the extension of the Minister's powers to provide financial assistance for the acquisition, planning, development maintenance and improvement of land and to secure tenure rights. Additionally, the Minister's powers were extended to include: acquiring not just land, but also movable and immovable property to improve the sustainability of agricultural land reform projects; acquiring economic enterprises; and acquiring shares or rights, title or interest in or to juristic persons. A contentious amendment amongst the Parliamentarians was the allowance for the Minister to expropriate land in terms

---

[23] Act 26 of 1998 and Act 58 of 2008.

of this Act. Compensation for land expropriated in terms of this Act is determined using the Expropriation Act of 1975, an apartheid era statute which is not in line with the Constitution and in the process of being repealed and replaced.

82. As highlighted by former President Kgalema Motlanthe's High Level Panel, the Provision Act is inadequate as a vehicle to guide the implementation of land redistribution. It does not define 'equitable access' in a meaningful manner, and provides no guidance as to how beneficiaries are to be selected, how land suitable for redistribution is to be acquired, how post-settlement support is to be provided, how the land tenure of beneficiaries is to be secured, and what role local authorities will play in land redistribution planning and implementation.

83. The Presidential Advisory Panel on Land Reform and Agriculture ("**Presidential Advisory Panel**") further stated that the wide powers afforded to the Minister to acquire and distribute land, without any set criteria on potential land beneficiaries, in a manner that is not transparent, with unknown identification of beneficiaries and targeted land, undermines section 33 of the Constitution, which is a right to administrative action that is procedurally fair, reasonable and lawful. Furthermore, the Presidential Advisory Panel found that the Provision Act provided no mechanisms to hold the Minister to account on decisions made to acquire land and the subsequent granting of land.

84. The Provision Act also does not assist in aligning the different sub-programmes of land reform to each other in a coherent manner. It is an inadequate vehicle for giving meaningful effect to the constitutional commitment to "foster conditions which enable citizens to gain access to land on an equitable basis", and for correcting the gross spatial inequalities inherited from the past.

85. If indeed the Provision Act purports to be the legislation required by section 25(5), it does not achieve that objective, and is thus unconstitutional to the extent of that failure.

Restitution of Land Rights Act, 1994

86. The Restitution of Land Rights Act, 1994 ("**Restitution Act**") is a law that gives effect to section 25(7) of the Constitution, aimed at restoring land for individuals who were forcibly removed from their land after 19 June 1913. The Restitution Act establishes the claims process, the Land Claims Commission and the Land Claims Court. The claim is not against the landowner, but against the State, which mediates between the claimant and the landowner. Compensation is paid to the landowner by the State, if restoration of the land to the claimant is deemed feasible. If not, compensation is paid directly to the claimant by the State.

87. Currently, market value is used as the basis to calculate compensation to be paid to the current landowner (if the land is to be restored to the claimant). Perversely, where restoration is not feasible, and thus compensation is to be paid directly to the claimant, the amount is much less, as it is calculated by applying inflation to the market value at the time of dispossession (without considering the current market value, which is typically much higher). Alternatively, these are standardised settlements offers (SSOs) ranging from small amounts of R17 500 up to R50 000 for major metropolitan centres.

88. Where land has to be expropriated for restitution purposes, the Restitution Act requires the 1975 Expropriation Act to be applied, which endorses a market value basis for calculating compensation.

SA

89. Restitution has been the primary focus of government on land reform. However, it has been a process that has been beset by challenges and legal complexities that have been widely documented, resulting in delayed justice for the claimants.

Land Reform (Land Tenants) Act, 1996

90. The Land Reform (Labour Tenants) Act, 1996 ("**Labour Tenants Act**") seeks to secure the tenure rights of labour tenants and former labour tenants, including by regulating their tenure and prohibiting illegal evictions. Tenants can claim and acquire full ownership of the land which they occupy.

91. Despite this law, many evictions have taken place since democracy. Thousands of unprocessed labour tenancy applications remain unresolved.

Communal Property Associations Act, 1996

92. The Communal Property Associations Act, 1996 ("**CPA Act**") was enacted to create a mechanism for acquiring land for land reform purposes through a juristic person called a communal property association ("**CPA**"), to hold and manage land jointly in terms of a written constitution.

93. The State has so far failed to provide the necessary support and assistance in the administration of CPAs, as well as dispute resolution. The obligations of the Department of Land Reform and Rural Development and the Commission on Restitution of Land Rights to provide support and oversight of CPAs have not been realised in practice, and the State has been in violation of the CPA Act's requirements for many years. Problems arising in terms of land allocation and governance among CPA members have been rife, arising in part from the design

of projects and the amalgamation of different groups and communities within CPAs. CPAs and traditional councils have battled to coexist, often leading to contestation over issues of control and land governance.

Interim Protection of Informal Rights Act, 1996

94. The Interim Protection of Informal Rights Act, 1996 ("**IPILRA**") recognises informal rights to land and stipulates under what conditions people may be deprived of such rights. This was a temporary measure to protect tenure for people living in communal areas of the former Bantustans, but has been revived annually since 1996 due to the failure of government to establish relevant and appropriate permanent legislation.

95. The lack of an explicit requirement for other legislation to comply with IPILRA, such as the Mineral and Petroleum Resources Development Act, 2002 ("**MPRDA**"), which establishes conflicting rights by granting prospecting and mining rights in areas where communities already have rights, leaves mining communities vulnerable to threats of dispossession.

Extension of Security of Tenure Act, 1997

96. The Extension of Security of Tenure Act, 1997 ("**ESTA**") regulates the tenure of occupiers of agricultural land, providing them with legal protection against illegal and arbitrary evictions, and measures to secure their long-term tenure rights, either on-site or off-site. ESTA applies to those who occupy farms with the consent of the landowner.

97. Landowners, who have better access to courts and legal representation than farm dwellers and farmworkers, have used ESTA mainly in order to evict workers legally, though there is research evidence that the vast majority of farm evictions take place illegally, without a court order.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998

98. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 ("**PIE**") gives effect to the constitutional provision in section 26(3) that no one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances and that no legislation may permit arbitrary evictions.

Spatial Planning and Land Use Management Act, 2013

99. The Spatial Planning and Land Use Management Act, 2013 ("**SPLUMA**") is a framework law that regulates spatial planning, land use management and related co-operative governance across all spheres of government – national, provincial and local. It is designed as a direct measure to redress apartheid spatial legacy after the Development Facilitation Act of 1995 was deemed unconstitutional and invalid in 2010, as it assigned exclusive municipal powers to organs of the provincial sphere of government.

100. SPLUMA provides for a uniform, effective and comprehensive system of spatial planning and land use management for South Africa. SPLUMA seeks, among other things, to redress imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems.

101. SPLUMA provides that the spatial planning system in South Africa consists of the following components: (a) spatial development frameworks to be prepared and adopted by national, provincial and municipal spheres of government; (b) development principles, norms and standards that must guide spatial planning, land use management and land development; (c) management and facilitation of land use through the mechanism of land use schemes; and (d) procedures for the preparation, submission and consideration of land development applications and related processes.

102. The High Level Panel in 2017 observed that the government departments tasked with implementing SPLUMA are characterised by ways of operating that are compliance centered, punitive in nature and not open to creative approaches to land use. Rather than creating an enabling environment for informal sectors to thrive, they have responded with evictions and confiscation.

103. Furthermore, the DALRRD's March 2024 presentation to the Portfolio Committee on Agriculture, Land Reform and Rural Development indicated that, while implementation and oversight of SPLUMA are underway, particularly at municipal level, there are compliance challenges. The DALRRD stated the following as some of its constraints to compliance: the lack of capacity at local government level and in some cases the urgency to prioritise spatial planning and land use management issues; funding challenges for land use schemes, spatial development frameworks and human resource to implement; instability in land use regulator formation and funding of sittings; amalgamation of some municipalities; resistance by traditional institutions to implement SPLUMA and

legal challenges in terms of section 36, the inclusion of Municipal Councillors on Municipal Planning Tribunals.

104. SPLUMA has some potential to contribute to the fulfilment of the requirement of section 25(5) of the Constitution to provide equitable access to land through its explicit development principles of spatial justice, spatial sustainability, efficiency and good administration, its progressive provisions and focus on spatial equity, its requirement to develop spatial development frameworks, and strong obligations around zoning schemes as a way to redress spatial apartheid by regulating property markets in a way that aims to redistribute resources more fairly.

105. However, SPLUMA does not address the following issues (explained in more detail below) that are essential elements of reasonable legislation under section 25(5): a definition of equitable access to land; how land is to be identified and acquired; how beneficiaries are to be identified and supported; multiple land uses; and integration with other aspects of land reform. It therefore does not cover the field required by section 25(5). If indeed SPLUMA purports to be the legislation required by section 25(5), then it is unconstitutional to the extent that it fails to address the five issues mentioned above.

LAND REDISTRIBUTION SINCE 1994 IN NUMBERS

106. It is widely documented that land reform has been on a path of policy failure.

107. There are notable inconsistencies in land redistribution and ownership statistics reported by the government and various experts, due to differences in the timing

of data collection, source data used, baseline data, varying adjustments to the baseline data and issues of interpretation of what is considered to be land.

108. According to the 2023/24 Annual Performance Plans for the Commission on Restitution of Land Rights and the Department of Agriculture, Land Reform and Rural Development, reporting performance at the end of 2022, of the 82 million hectares of white-owned commercial farmland in 1994,[24] around 11.4 million hectares has been transferred to black beneficiaries: 3.9 million hectares for land restitution,[25] and 7.5 million hectares for land redistribution, including through the PLAS.[26]

109. In contrast, President Ramaphosa reported in his State of the Nation Address in February 2024 that, from an estimated 77.58 million hectares of white-owned farmland in 1994, 19.3 million hectares or 25% had been redistributed.[27] This figure reduces to 14.7 million hectares or 19% when excluding 2.68 million hectares related to cash compensation (where no physical land redistribution took place) and 1.9 million hectares bought independently by black South Africans without government assistance. Additionally, Ramaphosa reported in

---

[24] Department of Planning, Monitoring and Evaluation, *Towards a 25-year review, 1994-2019*: 38, 154; Edward Lahiff and Guo Li, as cited by Tembeka Ngcukaitobi in *Land Matters*, 2021: 120.

[25] Commission on Restitution for Land Rights (Land Claims Commission). 2023/24 Annual Performance Plan (APP). Performance reported as at 31 December 2022. Minister's Report, Page 2.

[26] The Department of Agriculture, Land Reform and Rural Development (DALRRD) 2023/24 APP. Land redistribution and tenure reform - 5.2 million ha; PLAS - 2.3 million ha. Total = 7.5 million, Deputy Minister's Report, Page 9.

[27] Johan Kirsten and Wandile Sihlobo. 2024. The Conversation: This is how President Ramaphosa got to the 25% figure of progress in land reform in South Africa. Online: https://theconversation.com/this-is-how-president-ramaphosa-got-to-the-25-figure-of-progress-in-land-reform-in-south-africa-226135.

his Presidential address at the ANC's 55th National Conference in December 2022 that about 11% of commercial farmland had been redistributed since 1994: 5 million hectares through redistribution and 4 million hectares through restitution.

110. According to the Commission on the Restitution of Land Rights, 82,761 of the old order restitution claims had been settled by the end of 2022, benefitting over 452,829 households (some 2.2 million individuals).[28] This equates to 3.86 million hectares that has been restored at a cost of R25 billion.[29] Financial compensation, mostly for urban claimants, amounted to R21 billion.[30] The High Level Panel estimated that it would take 709 years for the restitution claims to be concluded, if the outstanding new order claims were taken into consideration.

111. With regard to tenure security, most South Africans remain tenure insecure with 60% of South Africans having no recorded rights to land, according to the 2019 Final Report of the Presidential Advisory Panel on Land Reform and Agriculture.

112. It is apparent that the State must conduct a thorough review to accurately assess the performance of land reform efforts. The appropriateness of the original RDP target of redistributing 30% of land, which remains unmet, is increasingly doubtful when considering the ongoing issues of landlessness, land hunger, and enduring racialised land inequality that still reflects conditions from the apartheid era. This evaluation is crucial because the 30% target was an estimate influenced by the

---

[28] Land Claims Commission. 2023/24 Annual Performance Plan. Performance reported as at 31 December 2022. Minister's Report and Service Delivery Performance, pages 2, 19.

[29] Ibid.

[30] Ibid.

World Bank's advice to the ANC, based on historical agricultural land sales of 6% per annum, rather than an assessment of the needs of the dispossessed, including their non-agricultural needs. There is widespread agreement that the pace of land reform has been too slow, producing results that are inadequate given the historical injustices and current land needs.

113. Land and ownership data in South Africa remains a challenge. Although it is outdated, the 2017 government land audit by the former Department of Rural Development and Land Reform remains the primary source of data on land ownership. According to this audit and other public sources:

113.1 South Africa has a total of 122 million hectares of land. 114 million hectares (94%) is registered in the Deeds office. The rest of the 8 million hectares (6%) comprises of unregistered trust state land in the Eastern Cape and Limpopo. Of the registered land, 111 million hectares (97%) is farmland and 3 million hectares (3%) is erven land in the urban areas.

113.2 About 94 million hectares (82%) of the total registered land is privately owned.

113.3 82 million hectares of farmland represented white-owned commercial farmland in 1994. Of the 37 million hectares of farmland that is owned by individuals, 27 million hectares (72%) is white-owned. Males own 26 million hectares (72%) of all the farmland that is owned by individuals.

113.4 Since 1994, about 11.4 million hectares of white-owned commercial farmland has been transferred to beneficiaries: 7.5 million hectares through land redistribution including the PLAS; and 3.9 million hectares through

SA

land restitution. Following this land transfer according to the government, white-owned commercial farmland is now estimated at 70.6 million of total farmland.

113.5 In urban areas, erven land used for housing shows a more diverse racial ownership pattern: by hectares, 49% is owned by White people, 30% by African people, and 8% each by Coloured and Indian people, with 5% in co-ownership and unclassified or undisclosed other. These statistics do not address the location, quality, or value of the land.

114. Land dispossession and the need for substantial land redistribution to address historical injustices remain key issues in public discourse. However, there is little focus on how white wealth has been enhanced by the land dispossession and other economic advantages gained through land ownership. Unsurprisingly, land inequality is a major driver of South Africa's extreme racial wealth and income disparities. With a Gini coefficient above 0.9 for wealth inequality and 0.67 for income inequality, South Africa is considered the most unequal country globally. The top 10% of the population controls over 90% of the country's wealth, leaving 80% of the population with almost no wealth.

115. Various indicators have been used to assess the economic benefits derived from land ownership following dispossession, with house and farmland prices serving as proxies. After 1994, both types of property saw price increases.

116. For instance, house prices rose from an average of R23,200 in 1975 to R358,700 in 2002, reflecting an average increase of 11%.[31]. This increase aligns closely with the average annual inflation rate of 11.5% during that period, indicating that in real terms, house prices remained relatively stable from the height of apartheid until nearly a decade after its end. However, by 2007, real house prices had surged to 144% above the 1999 level, and nominal prices had increased by 293%.[32]

117. Farmland prices also saw significant changes, doubling from a nominal average of R766 per hectare in 1994 to R1,517 per hectare in 2003, representing a 9% average annual increase over ten years.[33] When adjusted for inflation, the increase in real farmland prices was more moderate, fluctuating between R600 and R900 per hectare during this period.

118. The rise in house and farmland prices suggests that substantial economic gains from land ownership likely came from post-1994 price appreciation, even after accounting for inflation, leading to increased land and property values. In the absence of wealth or land taxes, these gains would have directly enhanced the net wealth and income creation of White landowners. These economic gains would also be due, in most cases, to land being acquired at below market prices

---

[31] Christo Luüs. 2005. The Absa residential property market database for South Africa-key data trends and implications. In the Bank for International Settlements (BIS) Papers No. 21, real estate indicators and financial stability, proceedings of a joint conference organised by the IMF in Washington DC, 27–28 October 2003.

[32] John Loos and Theo Swanepoel. 04 August 2015. FNB housing price index. FNB property barometer: 5.

[33] Michael Aliber and Reuben Mokoena. 2003. Farmland price trends in South Africa, 1994-2003: 2-4. Human Sciences Research Council (HSRC).

or directly dispossessed from Black people with significantly low or no compensation. While it could be argued that recent acquisitions from the 1970s onwards may have been closer to market value, which could have moderated the economic gains as compared to prior periods, particularly for newer generations of White landowners, the prevailing race-based discriminatory property laws still meant that White landowners were accruing more economic benefits than Black people, and thus, entrenched racialised economic inequality. Additionally, some of the financial gains from land may have been transformed into other types of assets, contributing to further wealth accumulation by Whites through diversification. In this way, the balance sheets of White households and individuals were enriched by the historical land dispossession of Black people.

119. The fact that land became much more expensive with the dawn and deepening of democracy, and the accompanying attraction of investment inflows, reveals two trends with profound implications for our constitutional project:

119.1 Those who were privileged enough to own land in the early-to-mid 1990s (most of whom were White or foreign, or White-owned or foreign-owned companies) received windfall escalations in the market value of their land. These were not brought about by any effort or expense of their own, but by the nation's rehabilitation into a welcome member of the global economic community.

119.2 Disturbingly, none of these windfalls accrued to the benefit of the landless poor. On the contrary, these market value increases served to take land further from their reach, by making it considerably less affordable year upon year.

120. This unjust dichotomy has contributed to the extraordinary racialised wealth and income inequality in South Africa, which is socially unsustainable and which will not reverse itself organically or through growth alone.

121. Despite an overall favourable position by the Davis Tax Committee in 2018 for South Africa to start considering a simple form of an annual wealth tax in response to the scourge of wealth disparities, no visible action has been forthcoming by the government to implement this.

122. Courageous and decisive State action is required. It has, however, been absent.

GOVERNMENT REVIEWS AND ACTIONS

123. Recognising the failure of land reform, the State has over time commissioned a series of reviews involving various stakeholders such as experts, affected parties and communities. These reviews covered all aspects of land reform, with a sufficient focus on equitable land access through redistribution. Other reviews were independent and unsolicited. There are overlaps on what the various reviews have uncovered, with some problems traced to the foundations of land reform laws and policies, and others to the government's implementation over the years.

124. The most relevant government or government-related reviews were:

124.1 The High Level Panel led by former President Motlanthe, mandated by the 5th Parliament in fulfilling the 4th Parliament's legacy report. The High Level Panel produced its report in 2017.

124.2 Specialist diagnostic inputs submitted to the High Level Panel in 2016 by the Institute of Poverty, Land and Agrarian Studies ("**PLAAS**").

124.3 The Presidential Advisory Panel established by President Cyril Ramaphosa to offer independent guidance to the Inter-Ministerial Committee on Land Reform, and specifically to investigate the implications of land expropriation without compensation as an input to the process of amending section 25 of the Constitution. It produced its report in 2019.

124.4 The Department of Planning, Monitoring and Evaluation ("**DPME**") 25-year review, commissioned by the Presidency and undertaken by the DPME in collaboration with other national government departments and Premiers' offices to evaluate the performance of the democratic government across South Africa's key development priorities including land reform since 1994. This review was completed in 2019.

125. The salient themes emerging from the reviews were the following:

125.1 **Land redistribution framework law**: There is a need for a unified and overarching legislative framework for all components of land reform, with a specific focus on land redistribution, and also addressing aspects relating to multiple land uses, target beneficiaries, pro-active targeted and area-based land acquisition and allocation, and compensation.

125.2 **Diverse land and tenure rights**: Land reform should be underpinned by a recognition of the continuum of land rights and the various ways people hold and attach meaning to land.

125.3 **Post-settlement**: Post-transfer support is vital for effective land reform, especially in respect of agricultural land. This support should include access to finance, infrastructure, resources, markets, training and irrigation.

125.4 **Land administration**: There is a need to establish land administration as a fourth component of land reform and to implement an integrated planning and land administration information system that recognises diverse land rights.

125.5 **Institutional reform**: A specialized land reform agency should be created to focus exclusively on land reform, to the exclusion of rural development (which should reside both horizontally across departments, and vertically across national, provincial and local spheres of government).

125.6 **Agrarian reform**: There is a need to integrate agrarian reform with land reform. Although there is no unified vision for agrarian reform, the various reviews highlighted the need to shift the focus from large-scale commercial agriculture – historically favoured by the government – to supporting small-scale farmers. Land subdivision is necessary to improve land access for small-scale farmers.

125.7 **Urban land reform**: Urban land needs should be considered, specifically addressing the needs of the poor and focusing on aspects such as housing, livelihoods, and urban agriculture. Efforts should also promote mixed uses to enhance spatial justice and foster economic inclusion.

126. Some of the most relevant actionable recommendations from the various reviews are the following:

126.1 a National Land Reform Framework Bill;

126.2 a new White Paper on South African Land Policy;

126.3 a compensation policy;

126.4 a voluntary land donations policy; and

126.5 an inquiry into land tax.

127. **Importantly**, the High Level Panel even included a draft National Land Reform Framework Bill.

128. The High Level Panel's report is too voluminous to attach to this affidavit, but it is a public document freely available on Parliament's website, and copies will be provided to the Court before the hearing of the matter.

129. As explained in more detail below, it has emerged that the High Level Panel's report and recommendations (at least in respect of land reform) have never been actively considered by Parliament or the National Executive. This is a travesty, considering the public resources spent on commissioning the review as well as the comprehensive and cogent nature of its findings and recommendations.

130. In contrast, the recommendations from the Presidential Advisory Panel, many of which expanded upon the High Level Panel's recommendations, were actively considered by the Cabinet and relevant Ministers, but little has come from this.

131. The Expropriation Bill has been cited by the government as a tool that will accelerate the pace of land reform.

132. The Expropriation Bill was approved by both Houses of Parliament and sent to the President for assent in March 2024. This Bill aims to replace the apartheid-era expropriation law and inter alia defines conditions under which it may be just and equitable for land to be expropriated at nil compensation. There is debate about whether the Bill will withstand constitutional scrutiny, as its opposers argue that it is an indirect amendment of the Constitution which requires compensation to be paid. Whilst the purpose of the Expropriation Bill refers explicitly to the expropriation of property in the public interest, which includes land reform, its highly contested nature, the vague formulation of just and equitable compensation and the legal requirement for compensation for each expropriation to be decided or approved by the court where there is disagreement between the parties to the expropriation, it is unlikely to be the tool that accelerates the pace of the provision of equitable access to land as required by section 25(5) of the Constitution. As the experience with the Restitution Act shows, legal complexities have severely impacted the speed of the restitution process, resulting in delayed justice for the land claimants.

133. More to the point, the Expropriation Bill says nothing about the process or terms of land redistribution to beneficiaries, or how it will foster equitable access to land. In short, it is not the legislation required by section 25(5) of the Constitution.

THE FOUNDATION'S ENGAGEMENTS WITH PARLIAMENT

134. On 1 March 2024, the Foundation sent a letter to the Speaker, a copy of which is attached marked "**FA1**", requesting that Parliament:

SA

134.1 disclose the steps it has taken, and intends to take, to enact the legislation required by section 25(5) of the Constitution; and

134.2 provide a timetable for the completion of the long-overdue legislative process in relation to the steps they intend taking.

135. The Foundation requested this information by no later than 2 April 2024. As per the letter, it was indicated that if Parliament was unable or unwilling to provide this information, the Foundation intended to bring a court application to compel the National Executive and Parliament to pass the national legislation required by section 25(5) of the Constitution within a reasonable time.

136. While the letter was acknowledged by the Speaker's office and a subsequent response received by the National Assembly Secretariat, indicating that our letter was "receiving attention", the Foundation did not receive a substantive response until 15 April 2024, when the Acting Speaker sent us a letter, a copy of which is attached marked "**FA2**", stating that "the issue of land reform will continue to form part of the business of Parliament beyond this 6th Parliament". Attached to the letter was a report by the Portfolio Committee on Agriculture, Land Reform and Rural Development ("**the Committee**").

137. The Committee's report disclosed, among other things, the following:

137.1 In March 2018, the Committee in the 5th Parliament deferred the High Level Panel's recommendations to be addressed by the 6th Parliament.

137.2 In February 2020, in the 6th Parliament, the Committee asked the then Minister of Agriculture, Land Reform and Rural Development what her Department had been doing in response to the High Level Panel's

recommendations, and learned that, according to her knowledge, the report had never been referred to the Executive for engagement and response. The meeting also indicated that by the end of 2024/25, the Department of Agriculture, Land Reform and Rural Development ("**DALRRD**") would have introduced the Land Redistribution Bill and reviewed the White Paper on South Africa's Land Policy.

137.3 In March 2020, the Minister and DALRDD reported inter alia that they were working on a Land Redistribution Bill. This convinced the Committee that it would not need to initiate a Committee Bill on the same matter.

137.4 On 11 March 2024, the Committee asked the Minister for an update on the Land Redistribution Bill. On 20 March 2024, the Minister responded inter alia that in 2023, consultations with key stakeholders had taken place and a Socio-Economic Impact Assessment System (SEIAS) certification was obtained from the Presidency. Furthermore, her Department planned to submit the draft Bill to Cabinet in the first quarter of the 2024/2025 financial year, to be published for public comment. The Department then planned to submit a revised draft Bill to Cabinet by the second quarter of 2024/2025. The Minister, however, indicated that the national elections of 29 May 2024, and possible changes in the Executive, might affect this timeline.

137.5 The Committee would leave it to the 7th Parliament's Committee to revisit the High Level Panel's recommendations and to "consider requesting the National Assembly to refer the Report to the Executive for consideration and implementation".

138. A striking revelation in the Committee's report is that nothing had been done with the High Level Panel's recommendations for over two years, only then to ask the Minister what she had done about them. The Department was working on a draft National Land Reform/Redistribution Bill in 2020 but by March 2024 still had not presented a draft to Cabinet. In those four years, the Committee had failed to exercise oversight over the Executive as far as the Land Reform/Redistribution Bill was concerned.

139. This request by the Chairperson of the Committee to the Minister was only made after the Nelson Mandela Foundation had sent a letter to Parliament which gives merit to the position that Parliament will only act on this matter when pushed to do so. The response letter sent to the Foundation supports this position as it states: "For purposes of transparency and because it was compiled specifically to respond to your submission, I attach the Committee's report to this reply".

140. The first quarter of the 2024/2025 financial year ended in May 2024, the second has also passed, and there is still no sign of the long-promised Land Reform/Redistribution Bill.

HOW THE STATE HAS BREACHED SECTION 25(5) OF THE CONSTITUTION

141. It simply cannot be disputed that the State is in breach of the obligation in section 25(5) of the Constitution to pass reasonable legislation to foster conditions which will enable citizens to gain equitable access to land. It has been 27 years since that section was cast in constitutional stone.

142. It has also been some seven years since the High Level Panel recommended a Land Reform Framework Bill, and even produced a draft. The Executive never even looked at it, and Parliament did nothing to develop it.

143. It has now also been four years since the Minister promised a Land Redistribution Bill and there is still no sign of it.

144. The Executive should have initiated a Bill to give effect to section 25(5) even as far back as the Mandela administration. We readily admit this. In the absence of a Bill from the Executive, the first, second, third, fourth and fifth Parliaments should have put pressure on the Executive to produce such a Bill, or should have produced one themselves.

145. Section 237 of the Constitution commands:

> All constitutional obligations must be performed diligently and without delay.

146. In the circumstances, it is quite incontestable that the State has failed to fulfil its constitutional obligation, under section 25(5), to take reasonable legislative steps to foster conditions to enable equitable access to land. It has certainly failed to do so "diligently and without delay".

147. This failure is ongoing. The Speaker's letter and Committee's report reveal that the legislation required by section 25(5) is still not regarded as a pressing priority.

148. Court intervention is required to compel the State to pass that legislation within a reasonable time.

MINIMUM ELEMENTS FOR REASONABLE LEGISLATION TO GIVE EFFECT TO SECTION 25(5)

149. We submit that the legislation required by section 25(5) of the Constitution, in order to be reasonable, should address at least the following elements:

149.1 the definition of "equitable access" to land;

149.2 how land is to be identified and acquired;

149.3 how beneficiaries are to be selected and supported;

149.4 multiple land uses; and

149.5 integration with other elements of land reform;

150. We address each element in turn.

Defining equitable access to land

151. The High Level Panel in 2017 identified a gap in law in terms of the absence of the definition of the right to equitable access to land as articulated in section 25(5) of the Constitution. This finding was carried forward by the Presidential Advisory Panel in 2019. The definition of equitable access to land needs to attend to two components; it has to define what access to land entails and the concept of equity where this access is concerned.

152. Defining equitable land access is important because there are various ways in which people can gain access to land, either through individual or communal ownership or a legally recognisable right to access and use of the land. For this legal action, the Foundation is primarily concerned with the racialised land

ownership inequality that continues to resemble the colonial and apartheid era that the government has failed to redress since 1994. State owned land is limited to adequately resolve land redistribution in South Africa. Therefore, legislation should adequately provide for the transfer of land ownership including associated land rights from private individuals, who would predominantly be White.

153. However, the Foundation recognises that the legislation must also provide for circumstances where the provision of secured rights to access and use of the land would be more appropriate to respond to the land hunger needs envisaged in section 25(5) of the Constitution.

154. Defining equity is important in the context of finite public resources and the 'elite capture' that has dominated the land redistribution programme to date. As the High Level Panel states, the wording of the Constitution indicates a bias that the beneficiaries of land redistribution should be the needy. It is therefore important that a legal definition is established that will aid the prioritisation of land access on the basis of equity.

How land is to be identified and acquired

155. The High Level Panel found that within the current land redistribution programme, people have had to accept land that does not fit their priorities and needs, for instance land that is far away from towns and infrastructure, or large farms rather than smallholdings.

156. Both the High Level Panel and the Presidential Advisory Panel recommended the need for a beneficiary demand-driven identification of land to be acquired for redistribution and area-based planning to ensure that suitably located land that

meets the needs of the beneficiaries was targeted for acquisition. A supply-side identification approach is also possible given that, even though limited, there could be land available from the State including the municipalities, or voluntarily given up by private landowners through donations. In designing legislation, methods to identify suitable and appropriately located land to be targeted for acquisition to meet the evidenced needs of the beneficiaries have to be specified.

157. The legislation should cater for the different ways in which land can be acquired, such as through land purchases, expropriation, state land disposal, voluntary donations and subdivision. The legislation should also specify the method to determine the consideration or compensation for the land acquired that is in line with the Constitution. The legislation should require a supportive policy that will outline evidence based targets for the land targeted for acquisition. Targets should also be set for land allocation. The legislation should provide for the acquisition of other rights associated with the land, where these are integral to the use of the land, such as water and mineral rights. Where the rights are not relevant to the access and use of the land, the legislation should provide guidance concerning the transfer, access and use of such rights.

How beneficiaries are to be selected and supported

158. Section 25(5) of the Constitution plainly intended for the beneficiaries of equitable access to land to be the needy. As the High Level Panel and Presidential Advisory Panel reviews show, the land redistribution programme has evolved from a pro-poor focus that was outlined in the RDP and White Paper to a programme that favours predominant class interests comprised of those with

access to capital and political networks. Furthermore, women have benefitted the least from land redistribution programmes compared to men.

159. As the Panel reviews and other expert reviews such as PLAAS have revealed, the 'elite capture' of the land redistribution programme has been possible due to a legislative failure to provide guidance on how to identify, select and prioritise beneficiaries for land redistribution. According to the Presidential Advisory Panel, the lack of transparency in the manner in which beneficiaries are selected for land redistribution combined with the wide discretionary powers afforded to the Minister undermines administrative justice in terms of section 33 of the Constitution.

160. There is a need for legislation to guide a fair, open, transparent, participatory beneficiary selection process to ensure that land access accords with section 25(5) of the Constitution. The legislation should also provide guidance on how the concept of equity as defined is applied in the beneficiary selection process. The 2020 National Policy for Beneficiary Selection and Land Allocation establishes a comprehensive base for beneficiary selection, but requires more focus where non-agricultural land is concerned. This policy will need to be aligned to the new legislation, once established.

161. The majority of land reform projects have failed to date due to a lack of post-settlement support. The High Level Panel stated the following:

> Post-transfer support (also known as post-settlement support) for land reform beneficiaries ranks high as a key challenge. Beneficiaries in both land redistribution and restitution projects face multiple challenges such as poor infrastructure on farms, inadequate access to agricultural inputs, group tensions and lack of support from official agencies (e.g. for agricultural extension, business management, legal advice). Some

SA

scholars extend the definition/understanding of land reform to include post-transfer support as a necessary element of land reform (Manenzhe, 2007).

162. Post-settlement support relies on cooperative governance and effective coordination with clear roles and responsibilities amongst the relevant departments and other government entities including the local municipalities. It also relies on adequate budget resources, which has been a challenge for land reform as a whole, as multiple reviews revealed that it has been consistently under-budgeted.

163. Land requires availability of resources and skills, where relevant, to ensure its sustainable use post transfer, regardless of the intended use. Once acquired, the land has to be developed, maintained, improved and operated, as relevant. The intended beneficiaries for land redistribution are needy individuals who are unlikely to have the scale of the resources required to fully ensure its sustainable use. The government has theoretically provided for such needs within the amended Act 126 and in the White Paper. However, the Panel reviews show that this has not been successfully applied in practice.

164. Section 25(5) of the Constitution is concerned about equitable access to land for citizens. However, it is reasonable to assume that the intended impact from this access is to ensure sustainable land use that improves the lives of beneficiaries. Whilst there are non-productivist and non-monetary benefits of having land redistributed, avoidable failure of projects post-land transfer is a waste of scarce public resources.

165. In designing the new legislation, post-settlement support needs to be adequately addressed to respond to the existing weaknesses outlined in the Panel and

expert reviews. Without post-settlement support, land redistribution will have limited sustainable impact for beneficiaries.

Multiple land uses

166. Multiple reviews by the government and experts reveal that land reform, and land redistribution, in particular have focused on agricultural uses of land with a significant rural bias. According to the Presidential Advisory Panel, 65% of South Africans currently live in urban areas. However, given the nature of spatial segregation of apartheid, the rural-urban linkages remain strong in South Africa. Therefore, there is a need for land redistribution legislation to cater for multiple land uses beyond agriculture in the rural, urban and peri-urban areas including human settlement, infrastructure development and multiple livelihood needs, and for commercial and non-commercial purposes.

Integration with other elements of land reform

167. While the Foundation's legal action is primarily concerned with redressing unequal and racialised land ownership patterns that are a legacy of past racially discriminatory land laws by effecting section 25(5) of the Constitution through reasonable legislation, it recognises that the three pillars of land reform (restitution, redistribution and tenure reform) are interconnected and enhance or sustain equitable access to land.

168. A consistent finding across the High Level Panel and the Presidential Advisory Panel is the legislative gap to ensure coherent alignment and consistency across all pillars of land reform. The High Level Panel detailed the inseparability between equitable access in terms of section 25(5) of the Constitution and the provision

SA

of secured tenure for the access granted. The Panel reviews also emphasized the need for legislation to allow for flexibility in the recognition of diverse rights arising from statutory law, common law or customary law. What is important is that rights must be protected and enforceable by way of accessible and effective remedies.

169. A natural overlap also exists in that the current tenure laws, ESTA and the Labour Tenants Act, contain redistributive elements, which according to the High Level Panel have been underutilised. Better coherence across the pillars of land reform would also ensure that restitution claims prior to the 1913 Natives Land Act have a preferential status within land redistribution.

170. Legislation to effect section 25(5) of the Constitution should ensure coherence and consistency across the three pillars of land reform to enhance or sustain equitable access to land. Equitable access to land should always be accompanied with recognisable, equitable and secure tenure arrangements.

APPROPRIATE, JUST AND EQUITABLE RELIEF

171. We submit that the appropriate, just and equitable relief, in terms of sections 38 and 172(1)(b) of the Constitution, would be an order:

171.1 declaring that the State has failed to discharge, diligently and without delay, its obligation under section 25(5) of the Constitution;

171.2 declaring, to the extent necessary, that the Provision Act is inconsistent with section 25(5) of the Constitution and invalid to the extent that it fails to address:

171.2.1 the definition of "equitable access" to land;

171.2.2 how land is to be identified and acquired;

171.2.3 how beneficiaries are to be selected and supported;

171.2.4 multiple land uses; and

171.2.5 integration with other elements of land reform;

171.3 directing the respondents to:

171.3.1 ensure that, within 18 months, national legislation is enacted which at least addresses the issues listed above;

171.3.2 report to the Court every three months regarding the steps taken to pass such legislation.

172. We submit that 18 months is enough time for the State to ensure the passage of this vital legislation with full public participation. Our country cannot afford further delay. In the absence of a court-ordered deadline, and a requirement to report regularly to the Court, we reasonably apprehend, based on what has happened in the past, that the State will not act with the urgency required.

CONCLUSION

173. For the reasons set out in this affidavit, the Foundation respectfully prays for an order in the terms set out in the notice of motion.

MBONGISENI BUTHELEZI

I certify that this affidavit was signed and sworn to before me at Norwood on this the 5th day of December **2024** by the deponent after he declared that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he regards the prescribed oath as binding on his conscience, after he uttered the words: "I swear that the contents of this affidavit are true and correct, so help me God."

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

COMMISSIONER OF OATHS

FA1

NELSON MANDELA
FOUNDATION
Living the legacy

1 March 2024

Speaker of the National Assembly
Hon. Nosiviwe Noluthando Mapisa-Nqakula, MP
c/o Secretary of Parliament
E-mail: info@parliament.gov.za
E-mail: publicrelations@parliament.gov.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

Dear Honourable Speaker

RE: REALISING THE RIGHT TO LAND

"The fundamental basis of all wealth and power is the ownership and acquisition of freehold title to land. From land, we derive our existence. We derive our wealth in minerals, food, and other essentials. On land we build our homes. Without land we cannot exist. To all men of whatever race or colour land, therefore, is essential for their wealth, prosperity, and health. Without land-rights any race will be doomed to poverty, destitution, ill-health and lack of all life's essentials."

- Dr Alfred Bitini Xuma, *ANC Presidential Address*, 14 December 1941

Land can be characterised as a marker for the extent to which freedom and justice have not been achieved in South Africa and an incomplete promise of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). In the absence of achieving meaningful land rights for the citizens of this country, we can never truly be a constitutional democracy.

As outlined in Section 25(5) of the Constitution, "*The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens*

NELSON MANDELA
FOUNDATION
Living the legacy

to gain access to land on an equitable basis". To date, the National Executive has failed to initiate, and Parliament has failed to enact, any legislation to give effect to this constitutional obligation.

In *Ready to Govern: ANC Policy Guidelines for a Democratic South Africa*, in 1992, the African National Congress placed land reform at the centre of its economic agenda, stating among other things as follows:

> "Dispossession and denial of rights to land have resulted in the present unequal division of land and landlessness, which will require legislative intervention far beyond the mere repeal of apartheid land laws. Our policies must provide access to land both as a productive resource and to ensure that all our citizens have a secure place to live…
>
> Effective measures to ensure that landless people gain access to land on fair terms … will be introduced by an ANC government as a matter of priority."

This promise needs to be realised.

The Nelson Mandela Foundation hereby requests Parliament to disclose the steps it has taken, and intends to take, to enact the legislation required by section 25(5) of the Constitution. This should include a timetable for the completion of the long-overdue legislative process. The Foundation requests this information by no later than **Tuesday, 2 April 2024**.

If Parliament is unable or unwilling to provide this information, the Foundation intends to bring a court application to compel the National Executive and Parliament to pass the national legislation demanded by section 25(5) of the Constitution within a reasonable time. As we reflect on the 10-year anniversary of the passing of our founder Nelson Rolihlahla Mandela as well as the 30-year anniversary of the Constitution, we believe that such an action is in line with his memory and legacy as well as the public interest.

NELSON MANDELA
FOUNDATION
Living the legacy

Dismantling intergenerational poverty and inequity is the Nelson Mandela Foundation's primary focus. Thus, our interest in meaningful land reform. In the last five years, we have commissioned research, convened dialogues, supported state-led reviews, and undertaken advocacy work in this area.

As South Africans, we can no longer avoid the difficult work of reckoning with the pain of our past and dismantling and creating the future we want.

Kind regards,

Prof Verne Harris

Acting Chief Executive

cc Head of the National Executive, Hon. President Matamela Cyril Ramaphosa

cc Leader of Government Business in Parliament, Hon. Deputy President Paul Shipokosa Mashatile, MP

cc Minister of Agriculture, Land Reform and Rural Development, Hon. Thokozile Didiza, MP

cc Advocates Tembeka Ngcukaitobi SC and Ben Winks

cc Rupert Candy Attorneys Incorporated

FA2

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

THE SPEAKER
PO Box 15 Cape Town 800 Republic of South Africa
Tel: 27(21) 403 2595 Fax: 27(21) 461 9462

Prof V Harris
Acting Chief Executive of the Nelson Mandela Foundation (NMF)
Email: verne@nelsonmandela.org.za

Dear Prof Harris,

Letter of demand about progress with land reform

Your letter, dated 1 March 2024, in which you request information about measures taken by Parliament to give effect to section 25 of the Constitution and redistribute land on an equitable basis, bears reference.

There is no doubt that, as you assert, land reform must be a priority for the State and Parliament in order to build a just and prosperous nation where all citizens have access to the resources to which they are entitled. In this regard, the need for land redistribution has been the subject of ongoing discussions in Parliament and its interactions with the Executive over a considerable period of time.

As you will be aware, the National Assembly has established oversight committees to oversee the activities of the respective departments and entities. The Portfolio Committee on Agriculture, Land Reform and Rural Development (the Portfolio Committee) was accordingly established as the vehicle by which the Assembly was able to pursue land reform. The Portfolio Committee has submitted a report with the information you may find insightful.

For purposes of transparency and because it was compiled specifically to respond to your submission, I attach the Committee's report to this reply. In conclusion, I need to emphasize that the issue of land reform will continue to form part of the business of Parliament beyond this 6th Parliament.

Yours sincerely,

Mr SL Tsenoli, MP

Acting Speaker of the National Assembly

Date: 10/04/24

CC. Hon ZMD Mandela, MP
Chairperson of the Portfolio Committee on Agriculture, Land Reform and Rural Development

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

COMMITTEES
PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27 (21) 403 2597 Fax: 27 (21) 403 3205
www.parliament.gov.za

Report on the Portfolio Committee's interventions to ensure realisation of the constitutional obligation for Parliament to provide legislative measures to foster equitable access to land

1. Purpose of the report

On 6 and 19 March 2023, the Office of the Speaker of the National Assembly requested the Chairperson of the Portfolio Committee on Agriculture, Land Reform and Rural Development, hereinafter referred to as the Committee, to appraise the Speaker about steps taken by the Committee to ensure that Parliament gives effect to Section 25(5) of the Constitution. The remainder of this report gives an account of activities of the Committee to ensure that legislative measures to as requested.

2. Context

Section 25 of the Constitution lays a foundation for land reform in South Africa. The programme of land reform is categorised into three sub-programmes: namely, land redistribution (Section 25.5), tenure reform (Section 25.6) and restitution (Section 25.7).

Section 25(5) of the Constitution provides that –

> "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."[1]

Since 1994, Parliament has passed a number of pieces of legislation to lay a foundation for land reform. Amongst those is Restitution of Land Rights Act (1994) to give effect to Section 25(7), Extension of Security of Tenure Act (1997) and the Land Reform (Labour Tenant Act) (1996), the Interim Protection of Informal Land Rights Act (1997) to give effect to Section 25(6). Land Redistribution is implemented on the basis of the Provision of Land and Assistance Act No. 126 of 1993 (Act 126). Act 126 empowers the Minister Agriculture, Land Reform and Rural Development to acquire, designate State land under her control and to develop such land for purposes of small-scale farming, residential, public, community, business or similar purposes, by way of providing financial assistance to persons settled on land.

[1] RSA(1996) Constitution of the Republic of South Africa; Sec 25(5).

The parliamentary High-Level Panel on Assessment of Key Legislation and Fundamental Transformation (HLP), as did the Presidential Advisory Panel on Land Reform and Agriculture, found that Act 126 is inadequate as a means to effect redistribution of land in line with section 25(5) of the Constitution cited above. Some of the criticism can be summarised as follows:

- Act 126 lacks mechanisms for beneficiary selection (i.e. eligibility and prioritisation)
- Selection of beneficiaries is not transparent and undermines Section 33 of the Constitution.
- The Act does not provide for coordination of land and agrarian reform, thus making land redistribution solely the function of the Department of Agriculture, Land Reform and Rural Development. The departments responsible for water and sanitation, human settlement, cooperative government and traditional affairs, etc not mandated to actively contribute to land redistribution.

The DALRRD relies on various internal policies on redistribution to implement the redistribution of land. The HLP and the Presidential Advisory Panel have criticised land redistribution approach because there is lack of coherent policy direction. The policies on redistribution do not have a specified purpose in relation to gender and class considerations.

Against this background, the panels concluded that redistribution warrants an overhaul and an introduction of a coherent, co-ordinated, and comprehensive framework that will empower the government to deliver on its obligations in 25(5). They recommended that a National Land Reform Framework Bill (or 'Redistribution Bill') be initiated by the Executive and/or passed by Parliament.

It should be noted that there are other policy and legislative mechanisms by government, overseen by the Parliament, to improve on land redistribution programme as well as the pace of delivery of land. Some of the issues can be summarised as follows:

- Development of the Beneficiary Selection Policy to ensure transparency and targeting smallholder farmers, especially those previously marginalised.
- Release of State land for redistribution purposes
- Processing of the Expropriation Bill by the Portfolio Committee on Public Works and Infrastructure and recently the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure received final mandates on the Bill.

3. Steps that the Portfolio Committee on Agriculture, Land Reform and Rural Development (and its predecessor, the Portfolio Committee on Rural Development and Land Reform) has taken to ensure that the Redistribution Bill is passed.

3.1 Following the release of the release of the HLP report in November 2017, the Portfolio Committee on Rural Development and Land Reform convened a meeting on 14 March 2018 to receive a briefing on the recommendations of the HLP. One of the key recommendations discussed was the introduction of the National Land Reform Framework Act and oversight implications by the Committee (i.e. National Assembly by extension). The Outcome of the Committee engagements on the HLP Report can be summarised as follows:

a) The meeting heard that there was going to be a holistic Parliamentary process to consider the report of the HLP. It should be noted that the matter came towards the end of the term, therefore there was no further opportunity for the Committee to deal with the matter.

b) The Legacy Report of the Committee included this matter as an outstanding matter for consideration by the new Committee in the 6th Parliament.

3.2 On 20 August 2019, the Committee considered the legacy report of the Portfolio Committee on Rural Development and Land Reform. The Portfolio Committee on Rural Development and Land Reform recommended that the new Committee should focus on policy review, white paper on land reform and recommendations of the HLP (incl. National Land Reform Framework Bill). The Committee included the recommendation for the Committee to attend to the Recommendations of the HLP in its plans for the term.

3.3 On 11 February 2020, the Committee met to consider the legislative programme of the Department, amongst other issues. One of the key issues was to assess if the National Land Reform Framework Bill, to be initiated by the Executive was included. In the engagements about the programme of the Committee, the Minister remarked that the HLP was a parliamentary process and according to her knowledge, the report was not referred to the Executive for engagement and response. She noted that the Committee wished to engage on the report of Presidential Advisory Panel and she would come to report about the Department's response to the panel report as well as what they were doing about the recommendations. The Committee on the other hand agreed to invite relevant former Panellists of the HLP to present to the Committee.

3.4 As a follow up to the meeting of 11 February 2020, the Committee invited the Minister and the Department to respond to the recommendations of the Presidential Advisory Panel. Of the 73 recommendations, assessed and clustered into 7 thematic areas, 50 of them relate to the function of the DALRRD. With regard to policy response to the recommendations, the DALRRD included in its Policy Frameworks, Policies and Legislation Targeted for 2020/2021 to 2024/2025" the following:

(a) The Deeds Transformation Policy and Bill
(b) The Land Administration Policy and Bill
(c) **The Agrarian Reform Policy**
(d) **Revised White Paper on Land Policy and the Land Redistribution Bill**
(e) Land Valuations
(f) Land Compensation Policy and Urban Land Policy.

These policy and legislative initiatives were believed to be interventions necessary to fast-track redistribution of land. Specifically, item (c), (d), (e) and (f) were to assist in fast-tracking land redistribution in a manner that is envisaged in Section 25 of the Constitution (NB. (d) specifically relates to policy and legislative measures envisioned in Section 25(5) of the Constitution.

The DALRRD also reported that the recommendations were being included in the the Annual Performance Plan of the DALRRD. In addition, the government was developing an integrated Programme of Action for the Inter-Ministerial Committee on Land Reform to address the recommendations the Executive agreed to.

3.5 The engagements between the Committee and the Minister together with the DALRRD, on both 11 February 2020 as well as 10 March 2020, convinced the Committee that the Minister was working on developing the land redistribution bill. Therefore, it was not necessary for the Committee to initiate a Committee Bill on the same matter. Further, the nature of Bill, as affecting a range of policy initiatives and various government departments, required the Executive – with all the resources as its disposal – to initiate the Bill. What remained important was for the Committee to monitor the developments and oversee that the plans to initiate the Bill were on track.

3.6 The Committee understood the complexity of the matter being dealt with and afforded the DALRRD opportunity to propose a comprehensive and well canvassed (consulted) piece of legislation to give effect to Section 25(5). During the coordinated oversight

jointly undertaken with the Portfolio Committee on Employment and Labour, the Committees considered the redistributive aspects of land tenure programme. The Committees invited a former panellist to address it on the recommendations of the HLP, amongst the issues is how the National Land Reform Framework and other proposals will enhance equitable access to land envisaged in Section 25(5) as well as tenure security envisioned in Section 25(6) of the Constitution.

3.7 The Meeting of 11 February 2020 indicated that by the end of 2024/25, the DALRRD would have introduced the Land Redistribution Bill, Reviewed the White Paper on South Africa's Land Policy. As part of a follow up to that understanding, the Chairperson of the Portfolio Committee wrote to the Minister of Agriculture, Land Reform and Rural Development on 11 March 2024 requesting update on the policy and legislative programme of the Department, with a specific attention to Land Redistribution Bill.

3.8 In a letter dated 20 March 2024, Mrs AT Didiza, the Minister of Agriculture, Land Reform and Rural Development responded to the Chairperson's request. Below is a summary of the status report by the Minister.

(a) Consultation between the Minister and the key stakeholders took place in 2023; and a SEIAS certification was obtained from the Presidency.
(b) The Department plans to submit the draft Bill to Cabinet in the 1st Quarter of 2024/25 for approval so that it could be published for comments.
(c) The Department plans to submit the revised Bill to Cabinet by the 2nd Quarter of 2024/25. Once approved, and certification by the State Law Adviser is obtained, the Bill will be introduced in Parliament.

3.9 It should be noted that the National Elections of 29 May 2024 might affect the timeline outlined above due to a change and in administration and possible changes within the Executive.

4. Future Steps

4.1 I do realise that the term of the 6th Parliament is drawing to an end and there is very little that the Committee can do to ensure that Parliament passes the Bill before it rises. However, the Committee has put in place measures to ensure that the new Committee takes up the matter forward. Some of those steps are included in the Legacy Report of the Committee.

(a) The new Committee in the 7th Parliament to revisit the recommendations of the HLP and consider requesting the National Assembly to refer the Report to the Executive for consideration and implementation.

(b) Outlining steps taken by the Committee to ensure that the Executive introduces the Bill in Parliament and documenting specific commitments (esp. the set timelines) by the Minister of Agriculture, Land Reform and Rural Development so that the new Committee can take the matter up once the new administration is established.

(c) Monitoring the status of the legislative programme of the Department, with quarterly reports on the National Land Reform Bill and Review of the White Paper on South Africa's Land Policy in line with timeframes as articulated in the Minister's correspondence of 20 March 2020.

Hon iNkosi ZMD Mandela

Chairperson: Portfolio Committee on Agriculture, Land Reform and Rural Development

Date: 22/03/2023