

AFRICAN NATIONAL CONGRESS (ANC)

PRELIMINARY SUBMISSION ON LAND RIGHTS

The ANC believes that land reform is a precondition for a legitimate, just and secure regime of property rights. The constitution must both empower land reform and ensure that it is not impeded by the provisions of the property clause. The ANC accordingly submit that:

1. Positive rights to land be included in the bill of rights, and
2. Land reform be excluded from the provisions of the property clause.

1. POSITIVE RIGHTS TO LAND

The bill of rights must contain a land rights clause to provide positive rights to land. Such rights must go beyond and complement the right to restitution for past dispossession and include rights to redistribution and tenure reform. The rights to land must address the following issues:

1.1 Restitution

Any person who was dispossessed of land by discriminatory laws or practices should be entitled to restitution of that land or alternative and equitable redress. The ANC proposes 1913 as a cut-off date for all land restitution claims. The aim of the restitution provision should be to resolve outstanding claims arising out of forced removals and past confiscation of land rather than to open up claims to the entire land base of South Africa and thereby cause delays in development and uncertainty in respect of all land rights.

It is not necessary to repeat the detail in the Interim Constitution. It is more appropriate for the constitution to create this constitutional right, establish principles and procedures whereby land rights would be restored to those who have been unjustly deprived thereof, and leave the detail to be dealt with by ordinary law.

1.2 Tenure Reform

Where people's rights and interests in land are insecure as a result of discriminatory laws, they should be entitled to legally enforceable security of tenure. Where there are overlapping tenure interests in the same land, there should be alternative redress for those whose rights cannot be accommodated in that land because of competing and stronger claims.

1.3 Redistribution

Every person should be entitled to equitable access to land in order to be able to sustain himself or herself. The state should be under a duty to take steps to achieve the progressive realisation of this right.

2. EXCLUDING LAND REFORM MEASURES FROM THE PROPERTY CLAUSE

In addition to providing for positive rights to land the constitution must not impede land reform measures. For this reason the ANC proposes the exclusion of land reform measures from the property clause. In this regard it is proposed that a proviso be added to the property clause which expressly states that this section shall not apply to measures aimed at bringing about land reform for the benefit of people previously disadvantaged by unfair discrimination.

3. OTHER ASPECTS OF A PROPERTY CLAUSE

In order to address other difficulties caused by a property clause in respect of the regulation of land and the quantum of compensation payable for the expropriation of land, the following submissions in respect of the wording of a property clause are made:

- 3.1 The role of a property clause is to describe the circumstances under which property may be expropriated or regulated, rather than to restate those property rights which already exist. Accordingly, such a clause should:
 - 3.1.1 permit the taking of property according to law and in the public interest, which includes the achievement of the objects of the constitution and action to redress.
 - 3.1.2 state that any taking must be subject to compensation to be determined on the following basis:
 - a) it should establish an equitable balance between the public interest and the interests of those affected;
 - b) it should not be based solely on the market value of such property;
 - c) it should take into account the use to which the property is being put; and
 - d) it should take into account the history of the acquisition of the property.
 - 3.1.3 state that the regulation of property or its use shall not be construed as a taking of property rights. The currently used phrase “rights in property” will make regulation difficult or expensive and the word “property” should be used in its place.