



AFM OF SA PRESENTATION ON LAND EXPROPRIATION WITHOUT COMPENSATION

1. MANDATE:

Resolution: NLF2066/March 2018

“That the National Leaders Forum (NLF) of the AFM church of S.A.¹ mandates the National Office Bearers to develop a submission to parliament on land expropriation without compensation, with the assistance of experts. The submission will be circularized to the NLF for input and comments.”

2. INTRODUCTION:

In this document we will first examine the biblical interpretation of the issue revolving around land in both the Old and New Testaments. Secondly, we will be addressing the legal framework as it emerged in the South African Constitution with specific reference to section 25. Thirdly, we will be tabling our actual presentation based on the biblical and legal framework sections. Lastly, we will be advancing concluding remarks based on the ethical and theological considerations of our recommendations, as well as our desire to make an oral representation to the authority that will be handling this matter.

3. THEOLOGICAL BACKGROUND

It is useful to deal with the matter from the perspective of the Old Testament Scholar, Walter Brueggemann: Place, space and identity has to do with the making of history based on the stories the Bible narrates. He highlights the story of land, with space and identity, because land is the space where people are born, rituals are performed, and celebrations conducted in remembrance of the importance of the land that has been given by their Creator to them. For Brueggemann, place is space which has historical meanings, where some things have happened which are now remembered, and which provide continuity and identity across generations. (Pg. 5, *The Land*, Fortress Press 1977)

If one approaches this story of land from the book of Genesis, the first human beings, Adam, Eve and their descendants were given the land to live on and to cultivate it to the enhancement of life on earth. This



narrative was followed by the period of the Patriarchs, Abraham, Isaac and Jacob, who happened to be nomads without land designated to them at that time. The designation of the land of Canaan that is encapsulated in the Abrahamic promise came into fulfilment after the return of the Israelites from Egyptian slavery. According to this narrative Jacob and his family, about seventy-five people went to Egypt on the invitation of his son Joseph. It is here where they were oppressed and cried out to God for liberation from slavery, captivity and oppression. God saw their tears, heard their cries and decided to intervene in history to change their destiny.

4. LEGAL FRAMEWORK AS PER SECTION 25 OF THE SOUTH AFRICAN CONSTITUTION.

“25 Property

- (1) No one may be deprived of property except in terms of the law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of the law of general application—
 - (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—
 - (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section—



- (a) the public interest includes the nation's commitment to land reform, and for reforms to bring about equitable access to all South Africa's natural resources; and
- (b) property is not limited to land.

(5) 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. (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices are entitled, to the extent provided for by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.

(6) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(7) 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, in accordance with the provisions of section 36(1).

(8) Parliament must enact the legislation referred to in subsection (6)."

From the above-mentioned article subsections (1) (2) & (3) of the Bill of Rights, it is clear that expropriation without compensation will pose numerous difficulties including being constitutionally arbitrary.

5. ACTUAL PRESENTATION

In the light of the mentioned paragraphs the AFM of SA would like to make the following recommendations:

The AFM feels that Article 25 is ambiguous and in order to provide clarity and equity in land ownership, the Constitution should be reviewed, so that expropriation can be done legally. However, the following principles must be applied:



1. It must be based on the law of general application, that is just and equitable.
2. It must include agricultural and urban land, as well as land under traditional authorities. The land should be utilized for commercial use (for both industry and farming) and housing, as well as religious, educational, health, security, entertainment and other social needs.
3. It must be done in a manner that will not negatively impact the economy of the country. The utilization of this mechanism must ensure, amongst others, food security, greater agricultural output and complement our efforts to attract investment and economic growth.
4. A Regulatory Body consisting of all stake holders must be appointed and be tasked with the following responsibilities:
 - 4.1 Ensure that land/property tenure is upheld.
 - 4.2 Determination of how far back in history this action should commence.
 - 4.3 Initiate an audit process to assess utilization of the low-cost housing by deserving beneficiaries and the commercial farms by beneficiaries who acquired or leased land as a result of the land reform process.
 - 4.4 To ensure that title deeds have been/are given to the legitimate beneficiaries of RDP houses.
 - 4.5 To ensure that agricultural land redistribution is done with the transfer of necessary skills to ensure food security.
 - 4.6 To deal with disputes that may arise.
 - 4.7 To make sure that there is compliance with the recommendations mentioned herein above.
5. That all land reform processes be accompanied by the transferring of skills to make sure that food security will not be jeopardized.

6. ETHICAL AND THEOLOGICAL CONSIDERATIONS:

The ethical and theological considerations regarding this emotional topic revolve around various aspects drawn from the biblical background and legal framework. In the biblical background the issues of land and identity,



conquest and dispossession and the narratives of conflict that bears the hallmarks of joy and pain are evident. In the legal frame work the issues of the meaning of legal ownership and acquisition comes to mind, expropriation with or without compensation, an equitable and just price, in the public interest and for public use to mention but a few.

This controversial topic cannot be without emotion, but the participants to the debate should control their emotions in the best interest of the country as a whole. We therefore cannot avoid this discussion, but all involved should arm themselves with the idea of working together towards an amicable resolution that will make this country a better living space for all its inhabitants. It is not wrong to be emotional and to feel serious about the injustices with the land that was committed, as well as about the perceived injustice that is about to be committed by redressing the imbalances of the past. These emotional tendencies that were, are and are about to be displayed, are because of the fact that the issue of land is directly linked to identity. The issue of identity is about who I am, where I come from, where I belong and what will happen to my history and my future? -This is applicable to all South Africans.

The second ethical and theological issue that needs to be addressed is the matter of conquest and dispossession. Without going into the narrative of the exodus and the liberation of the Israelites from Egypt and its impact on present day Palestine, one needs to ask some serious questions about the South African narrative. The historical narrative of 1652 with Jan Van Riebeeck representing the Dutch colonization of South Africa, the 1820 British Settlers who annexed Kwa Zulu Natal and the Eastern Cape, the Portuguese expansionism by Vasco Da Gama and Bartholomew's Dias, the trek from the Great Lakes of Africa to the South and the Great Trek of the "Voortrekkers" should be born in mind. The other side of the narrative is that of the Khoikhoi, San, the Zulus, Xhosa, Tswana's, Sotho's and Pedi's, to mention a few.

The role religion has played in these narratives of conquest and dispossession is important to be remembered, because without it the current debate on the land with or without expropriation is not comprehensive. Questions that beg for an answer are, were these conquests theologically and morally correct? Is there a way in which it can be ethically and theologically justified? There is therefore no way in which



the church can and should ignore the narratives of joy and pain as represented by the question of the land in our country.

As far as the legal framework is concerned, the issue of ownership with title deeds is at the heart of this matter today, while the important issue of how these lands have been acquired should also be taken into account. The systematic promulgation of unjust laws to dispossess people, should also be mentioned. This includes the balkanization of South Africa and forced removals that uprooted people from the land where their ancestors are buried and where their identity was “legally” formed through the joyful cultural and religious stories that were told. Can these title deeds in the light of these experiences of pain, be really “legally justifiable?”

7. CONCLUSION

In conclusion we need to remind one another to be sober and mature when we have this discussion, because it is not about one group against the other, it is rather about **ALL of US** and the sustainable future of our country.

For this reason, the Apostolic Faith Mission is available to elaborate on our presentation and hereby requests to make an oral presentation to the concerned authority.

¹ The **Apostolic Faith Mission of South Africa** (AFM), is the oldest Classical Pentecostal Denomination in South Africa, founded in 1908. The AFM **united** into one multi-racial, multicultural and multi-linguistic church in 1996 and has 1.4 million members, 1532 congregations and 2498 pastors in the country. To a large extent, it is a microcosm of the South African society. The AFM is operative in more than 30 other countries globally, with national churches in most of them, of which the majority are on the African Continent. The Head Office is situated at 257 Jean Avenue, Building 14, Central Office Park, Centurion.