THE ROLE OF GOVERNMENT IN EXPEDITION LAND EXPROPRIATION: RESHAPING THE FUTURE OF LAND REFORM

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ABSTRACT

In an effort to realise its constitutional obligation towards land reform, it is crucial for government to ensure that land redistribution is expedited and regulated within the proper legislative frameworks. This article analyses the current legal framework regulating land expropriation in South Africa and takes a closer look into the link between expropriation law and administrative law and the role that each plays in the land reform process. The Constitution of the Republic of South Africa of 1996 highlights the State’s obligation to redress the land inequalities of the past. However, the current Expropriation Act, which is the key legislative instrument governing expropriations in South Africa, predates the expropriation mechanism provided for in Section 25(2) of the Constitution and appears to be in discord with the highest law of the land. The author highlights the inconsistencies that exist within the current legal framework and argues that as long as this discord continues to exist, government will continue to grapple with the land issue and will find it difficult to restore justice to the majority. Crucially, this article searches for possible solutions as to how government can expedite the land redistribution process. As a way forward, the author suggests changes to the current legal framework that could have the potential to improve policy fit and support better planning and procedure within the framework of expropriation law. In this regard, the legal position pertaining to payment of compensation in expropriation matters is highlighted and a recent landmark Constitutional Court decision is analysed as a means to advocating a proper legal framework that could solve the problem of the sluggish land redistribution process.

Keywords: Expropriation, Public interest, Public purpose, Compensation.

INTRODUCTION

History has shown that the majority of South Africans have suffered social ills as a result of draconian property laws that existed during the apartheid era. Unfair dispossession, limitation of land rights, human rights abuse and restriction of movement have characterised this oppressive period and, more than twenty years into our democracy,
government is still grappling to restore order within the broad area of land reform which is seen as an important cog in the country’s quest for equality (De Villiers, 2003). The issue of land reform continues to be in the spotlight and there appears to be political pressure on various structures of government to deal with this ubiquitous concern. Within a South African context, land reform can be described as fundamental initiatives embedded in legislation and policy that seek to broaden access to land, improve security of tenure and restore land or rights in land (Pienaar, 2015). From a global perspective, land reform has been employed to reduce poverty and address gross inequality (Pienaar, 2015). The pressure on government to return land to its rightful owners is underlined by the numerous public statements made by the President of the country. In his 2017 State of the Nation address, the President said that true reconciliation will not be achieved until the land issue has been resolved (Van Dalsen, 2017). He went on to stress that only eight million hectares of arable land have been transferred to black people which equates to only 9,8% of the 82 million hectares of arable land and he acknowledged that government needs to provide a more coherent process of handling expropriation of land and speeding up land reform (Van Dalsen, 2017).

Despite numerous public statements and promises by government to address the issue, minimal action has taken place and on the face of it, there appears to be a lack of urgency by the administration to deal with the land crisis. The question that remains is whether government can go about doing things differently in order to expedite the land reform process. In an effort to seek an answer, the researcher uses a qualitative approach by reporting on primary sources such as the Constitution, relevant legislations and case laws as well as providing a synthesis of the relevant literature relating to land reform by consulting secondary sources such as current published writings, scholarly books, reports and articles in the area of study. A key objective of the article is to highlight the languid process of expropriation and payment of compensation which is seen to be at the core of land reform. In this regard, barriers to land reform are examined, legislative and policy developments are also explored, and the thorny issue of compensation in expropriation matters is discussed. In demonstrating a practical nature of this article, the landmark Constitutional Court decision of Haffajee is analysed. This ruling is used in this regard as a means of advocating a functional framework that could be used to resolve the problem of sluggish land redistribution process.

**Expropriation and Administrative Framework**

In 1997, government published a White Paper on South African Land Policy with the aim of setting out the legal framework for land reform (De Villiers, 2003). The land reform programme of the Department of Land Affairs comprised of three sub-programmes: restitution, redistribution and tenure security and, as a means of achieving its constitutional mandate to "bring about equitable access to South Africa’s natural resources", government linked land expropriation to all three sub-programmes (Section 25[4] of the Constitution). Despite a constitutionally embedded land reform programme, and a commitment by government...
to reverse both the human and material conditions of those prejudiced by unjust land policies of the past, the stark reality is that market-assisted land reform has failed to deliver (Zimmerman, 1994). Land invasions, evictions, irregular land-use, poor quality land and inequitable distribution of land has resulted in the majority of South Africans being landless or holding insecure land rights (Land Reform Policy Discussion Document, 2012). In the past decade, crucial issues that have been identified as being critical to the land reform process are market-driven reform, environmental issues, budgetary constraints, statutory framework regulating reform as well as economic, developmental, social and political factors (De Villiers, 2003). The fact that land reform is embedded in the Constitution dictates that government cannot run away from its responsibilities of effecting land reform in South Africa (Pienaar, 2015).

Any reformative measure must be approached within the context of the Constitution and specifically the property clause. Section 25 of the Constitution of the Republic of South Africa of 1996 (hereinafter referred to as the Constitution) provides for the taking away of property from the owner, if such removal of property is for a public purpose or in the public interest subject to the owner being compensated. This process is referred to as expropriation. The Constitution authorises expropriations in lieu of the state’s obligation to redress the land injustices and inequalities of the past plus the need to utilise such property for the benefit of the public at large. In this regard, the National Development Plan acknowledges government’s constitutional obligation towards land reform, and central to the NDP’s broad framework is the recognition that the Constitution allows for the expropriation of property with compensation. The advent of the new constitutional order which sought to change the ever-proliferating range of restrictions on land ownership has in recent times seen much focus directed towards Section 25 of the Constitution which is commonly referred to as the property clause. The establishment of a modern, equitable property regime espoused by constitutional imperatives such as social justice and land reform has seen a shift towards the "socialisation" of property where economic, political and social considerations are key factors in the structure and analysis of the property clause (Badenhorst, Mostert & Pienaar, 2006). The uniqueness of Section 25 stems from its dichotomously protective and reformative nature in that it seeks to protect the property rights of landowners whilst at the same time looking to safeguard the interests of society (Badenhorst, Mostert & Pienaar, 2006). The controversial nature of the property clause is attributed to the fact that it contains a negative property guarantee which safeguards the individual property rights of the landowner on the one hand whilst allowing for state interference of the very same property rights on the other (Van der Walt & Pienaar, 2009). Section 25 is not only about the conventional protection of property rights but also about land reform and land rights which encompass justifiable infringements on property rights (Zimmerman, 2005). Its dichotomous nature is specifically illustrated by Section 25(2) and (3) of the Constitution which allows for the taking away of property from the owner by the state if it is for a public purpose or in the public interest subject to the owner being compensated. This process, as mentioned earlier, is referred to as expropriation which is an important constituent of land reform.
The two common categories of expropriation are administrative expropriations and judicial expropriations (Marais & Maree, 2016). Judicial expropriations are authorised by a court order whilst administrative expropriations are brought about by an administrative action usually regulated by an administrator who acts in accordance with the empowering statutes (Marais & Maree, 2016). The expropriation of private property by the State on behalf of land reform beneficiaries is authorised by the Constitution (Centre for Rural Legal Studies, 2003). However, within a South African framework, expropriations have been regulated by the Expropriation Act of 1965 which was later repealed by the Expropriation Act 63 of 1975 (Jacobs, 1982). Prior to the coming into effect of the Constitution, the Expropriation Act 63 of 1975 formed the basis of expropriation law and still remains in force to date.

It must be noted that the Expropriation Act 63 of 1975 specifically mentions that the Minister of Public Works has the power to expropriate immovable and movable property for public purposes (Section 2(1) of the Expropriation Act 63 of 1975). Section 1 of the Expropriations Act of 1975 defines, "public purpose" as including "any purpose connected with the administration of the provisions of any law by an organ of State". This rather broad definition of public purpose coupled with the fact that the Expropriation Act 63 of 1975 does not explicitly mention public interest has fuelled the argument that the Expropriation Act 63 of 1975 is in conflict with the Constitution. It follows that the Expropriation Act 63 of 1975 permits the Minister of Public Works to expropriate immovable property on behalf of certain juristic persons or bodies, but does not allow for the expropriation of property for the benefit of a private individual. However, it has been left to the judiciary to provide clarity as to the meaning of the phrase "public purpose" and, despite pre-constitutional court cases and post-constitutional court cases providing some clarity, it has generally been accepted that the expropriation should be of some benefit to the public (Eisenberg, 1995). The drafters of the final Constitution went a step further by including a reference to "public interest" which was not specifically mentioned in the Expropriation Act 63 of 1975, and it can be deduced that this broad safeguard was introduced in order to permit expropriations for land reform purposes (Van der Walt, 2005). However, the discord between the Expropriation Act 63 of 1975 and the Constitution has resulted in a situation where the courts have the responsibility of extending the interpretation of public purpose which, in some cases, has led to a degree of uncertainty and indecision by the administration (Slade, 2014). Despite the uncertainty that exists in respect of the current framework regulating expropriations, the Constitution ensures that societal considerations more often than not trump individual property rights especially when land reform becomes the focal point.

Government administrators have a crucial role to play to ensure that land procedures and processes are legal and in accordance with the regulatory framework. The Minister of Public Works has the general power to expropriate property in accordance with the land and infrastructure needs of organs of state. The Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Provision of Certain Land for Settlement Act 126 of 1993 authorises the Minister to expropriate
land for redistribution and tenure reform. The decision to recommend expropriation must be made by the Provincial Office of the Department of Land Affairs and by the Provincial Director and the process dictates that: (a) a notice of expropriation must contain ‘a clear and full description of the property’ and; (b) it also requires that the notice must clearly indicate the date of the expropriation and this ensures that the owner must have a clear indication of the exact date upon which the property will be taken away (Centre for Rural Legal Studies). In the case of Offit Enterprises (Pty) Ltd and Another v Coega Development Corporation (Pty) Ltd and Others (2011 1 SA 293 CC), it was held that expropriations are governed by statutory authorisations and Courts must be guarded against ‘the State capriciously exercising its rights to expropriate property’. The Court went on to add that in instances where the notice is unclear or ambiguous and there is no compliance with prescribed procedures, the likely end result is that the notice, as well as the expropriation, can be declared invalid. It is clear then, that State administrators have a clear duty to ensure that prescribed procedures are duly followed.

The increase in the number of expropriations that have been challenged in court on procedural grounds can also be seen as one of the stumbling blocks to an effective land reform process. Any owner who wishes to challenge the validity or lawfulness of the expropriation can do so under the Promotion of Administrative Justice Act 3 of 2000 (PAJA), and expropriations that occur via administrative actions must comply with the principles of administrative justice as set out in Section 33 of the Constitution. This course of action would especially apply to instances where the owner wishes to have the expropriation reviewed or set aside under PAJA. In instances where an aggrieved owner intends challenging the compensation for expropriation, such owner may choose to rely directly on Section 25(2) of the Constitution. Section 14 of the Expropriation Act provides that in instances where the Minister and the owner cannot reach consensus regarding the amount of compensation, either party may apply to the High Court for a determination in respect of compensation. It appears that a litigant can, therefore, choose between different sources of law when dealing with a constitutional issue of expropriation (Marais & Maree, 2016). The constitutional basis for land reform does provide a clear pathway as to which source of law to use when dealing with a land right that needs to be enforced (Pienaar, 2015). There is no doubt that having land reform embedded in the Constitution places a strong onus on government to take the necessary action to effect land reform and any action linked to land reform should be tested against the Constitution (Hall, 2007).

**Barriers to Land Reform**

In the Centre for Development and Enterprise Research Report (2008), it was mentioned that despite government pursuing land reform in a reasonable, largely market-orientated manner against the Constitutional backdrop, progress has stalled in recent years. Factors that have contributed to the slow land redistribution rate were unresolved restitution claims, government having to deal with complex and expensive claims, lack of capacity in the Department of Land Affairs and Department of Agriculture, productive land remaining unoccupied, a small percentage of state land being audited and
a mismatch between the Department’s budget and the likely cost of meeting government’s land reform goals (CDE Research Report, 2008). In an effort to adopt a more progressive approach to land reform, The Department of Land Affairs proposed seeking additional funding, advocating new taxes on land, moving away from applicant-driven reform to direct state action and seeking legislative and policy reform by affording government first option to purchase on the open market (CDE Research Report, 2008). Many years down the line, government is still under pressure in terms of speeding up the land reform process. Many legislative reforms have been attempted with some falling by the wayside. The Expropriation Bill was shelved in 2009, the draft Green Paper was supposedly leaked in 2010, an official Green Paper was published in 2011, a Land Reform Policy document of the African National Congress was produced in 2012 and a Draft Expropriation Bill eventually made its appearance in 2013 (Du Plesis, 2014). The 1997 White Paper on South African Land Policy supported the willing-buyer-willing-seller principle, but there appears to be general consensus that this model has failed to achieve its objective of acquiring land for land reform purposes (Committee on Rural Development and Land Reform, 2012). Some of the reasons for its failing revolved around the lengthy time-frame it took to acquire the land and negotiate compensation, the beneficiaries relying on the Department of Land Reform to do the negotiations on their behalf, delays in payment once agreement had been reached and officials failing to negotiate as a willing buyer would do so (Du Plesis, 2014). At some stage, the Ministry had contended that farmers were hindering the expropriation process by inflating property prices and there was an urgent need to abandon the willing-buyer and willing-seller model for a model that uses expropriation as an alternative method of land acquisition (The Green Paper on Land Reform, 2011).

The researcher believes that one of the biggest barriers to land reform is the perpetual discord between the Expropriation Act 63 of 1975 and the Constitution and the consequential uncertainty surrounding payment of compensation. The Constitution authorises expropriations in light of the State’s land reform obligations as well as to benefit the public at large (Section 25[4][a] of the Constitution). Despite the fact that the enforced loss of property is brought about unilaterally, the Constitution as well as the Expropriation Act 63 of 1975 dictate that just and equitable compensation is paid to the owner for the loss of the property (Zimmerman, 2005). In ensuring that just and equitable compensation is paid, the Constitution prescribes that there must be a balance between the interests of the deprived landowner and the public interest taking into account all relevant circumstances which are listed below. Section 25(3) of the Constitution provides that: "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 interest of those affected, having regard to all relevant circumstances, including the following:

- the current use of the property.
- the history of the acquisition and use of the property.
- the market value of the property.
• the extent of direct state investment and subsidy in the acquisition and beneficial capital.

• improvement of the property.

• the purpose of the expropriation."

Section 25(3) of the Constitution sets out a range of factors that must be taken into account when calculating just and equitable compensation and these factors differ markedly from the factors as set out in Section 12 of the Expropriation Act 63 of 1975 which refers to only two factors, market value and actual financial loss. This discrepancy goes to the root of the problem in calculating just and equitable compensation. The discord that exists in the legislative framework governing just and equitable compensation has, in the researcher’s view, been a contributing factor in the sporadic rate of redistribution of land. The Expropriation Act 63 of 1975 provides for redress in the form of an add-on to the fixed percentage of the compensation monies, which is termed solatium, and factors such as emotional distress, inconvenience and other non-pecuniary aspects dictate the percentage of solatium offered (Section 2[2] of the Expropriation Act 63 of 1975). The Constitution clearly lists the factors that must be considered in determining just and equitable compensation and solatium is excluded from the list. It is trite law that the provisions of the Constitution are peremptory and that any other pieces of legislation must give effect to it. Even though it has been argued that Section 12 can be reconciled with Section 25(3), it appears that the Constitution expressly insists on a different approach to the calculation of compensation where justice and equity are key factors in the calculation test (Du Toit v Minister of Transport 2006 [1] SA 297 CC). The Expropriation Act 63 of 1975 appears, on the face of it, to prefer market value over other important considerations. The deliberations surrounding the calculation of just and equitable compensation, against the backdrop of protracted deliberations between the parties, can also be seen to be another contributing factor towards the erratic pace of land redistribution.

**Improving the Current Regulatory Framework**

For years South Africa has lacked a nationwide, reliable and collated Land Valuator office, whose core functions would be to determine financial compensation in cases of land expropriation, set fair and consistent land values, create and maintain a proper database of information and provide property related advice to government (Land Reform Policy Discussion Document, 2012). In addition, South Africa has lacked a Land Rights Management Board and Commission that could have provided an integrated support structure for all groups including owners, potential beneficiaries and vulnerable groups whilst also providing the ideal institutional climate for managing the current regulatory property framework. It has taken some time but, fortunately, South Africa’s first Valuer-General, Christopher Gavor, was appointed in May 2015 as the country’s first Valuer-General after the Property Valuation Act 17 of 2014 was signed into law. The office reports to the Minister of Rural Development and Land Reform and is seen as central to ensuring that government’s land reform runs smoothly. The Land Valuator’s office has a crucial role to play in changing the
current land reform landscape. However, in order for the office to run smoothly, it is imperative that the office is not seen to come up with prices that favour the State. The Land Reform Policy Discussion Document (2012) specifically mentioned that "land reform must represent a radical and rapid break from the past without significantly disrupting agricultural production and food security" and in this regard there was an urgent need to enhance skills development, infrastructure development, service provision and credit access. The Land Reform Policy Discussion Document (2012) also called for the strengthening of the Land Bank as well as the finalisation of the Expropriation Bill in line with the Constitution. Five years down the line, it is quite evident that many of the recommendations have not come to fruition.

In 2014, the Minister in the Presidency for Planning, Performance, Monitoring, Evaluation and Administration at that time, Jeff Radebe, announced that Cabinet had approved the tabling to Parliament of the Expropriation Bill 2014 (News 24, 2014). It was anticipated that the Bill would consolidate the processes of expropriation across the various spheres of government. More importantly, it was going to address the discord between the Constitution and the current Expropriation Act 63 of 1975 by providing a consistent framework to incorporate expropriations in the public interest thereby allowing government to achieve its commitment to land reform. Importantly, the Bill was to provide for a proper notification process as well as an objection and representation stage before the decision to expropriate was made. At that stage, some of the concerns raised were that a select few would be able to afford the litigation costs and the Bill sought to extend the power to expropriate assets from the Minister of Public Works to all Organs of State which had the potential to undermine the security of tenure of the holders of prospecting and mining rights (Wentzel, 2005). It seemed positive that the legislature has tabled the Bill to address the shortcomings of the Expropriation Act 63 of 1975, and bring it in line with the Constitution, which was crucial to expediting the land reform process. During 2017 discussions in the National Assembly regarding the Expropriation Bill, opposition parties such as the Economic Freedom Fighters opposed the Bill on the basis of wanting expropriation to take place without compensation, while the Democratic Alliance was more concerned about the definition of property not being limited to land only. The Expropriation Bill was signed into law in May 2016 by President Zuma, but has been referred back to Parliament for reconsideration as the President was of the view that Parliament had failed to facilitate adequate public participation during the processing of the Bill. It has become clear that the sooner Parliament rectifies the Expropriation Bill, the better the prospect of improving land reform and redistribution.

As stated earlier, the redistribution of land has been affected by the settlement of compensation in expropriation matters. The Expropriation Act 63 of 1975, as well as the Constitution, makes payment of compensation peremptory. However,
in the landmark decision of Haffejee NO and Others v Ethekwini Municipality and Others (2011 6 SA 134 CC), the issue of timing of compensation was analysed and the Constitutional Court had to decide on whether the provisions of the Section 25 of the Constitution require that the payment of compensation must always precede the expropriation process, especially in instances where it may be used to deliberately frustrate the expropriation process. The Court held that the wording of Section 25(2)(b) clearly indicated that the “determination of compensation is a condition, not a condition precedent, for expropriation”. The Court held that the words “just and equitable” as set out in Section 25(3) of the Constitution provided a sound reason for looking at a flexible approach to compensation for expropriation. The Court had to weigh two scenarios: where expropriation without the determination of compensation may be “unjust” especially where the property owner may lose their homes and; where the insistence of the determination of compensation before expropriation may be “inequitable” especially where urgent expropriations in the wake of natural disasters may need to occur. The Court held that in both scenarios there were sufficient safeguards in the form of Section 26(3) and Section 34 of the Constitution to ensure proper relief. The Court held that determining compensation as a pre-requisite for expropriation is not compatible with the Constitution and would burden the State unduly. The Court, whilst recognising that expropriation without determination of compensation may be unjust and that the determination of compensation after expropriation may be inequitable, chose to view these conflicting factual situations in light of the “socio-economic developmental purposes” of the Constitution. It is clear that the Court had to consider the “historical context in which the property clause came into existence” and, therefore, leaned in favour of an interpretation that would serve the interests of the public and one that would not unduly frustrate the process of equitable redress and transformation. Haffajee’s case correctly points out that an inflexible application of the requirement of compensation in lieu of the factors as set out in Section 25(3) of the Constitution would make it difficult to determine just and equitable compensation before expropriation. A determination of compensation after expropriation would be just and equitable and in line with Section 25(3) of the Constitution especially in circumstances where a property owner refuses to accept a reasonable offer or seeks to deliberately frustrate the expropriation process.

The message from the Constitutional Court is that a landowner cannot frustrate the process of expropriation by refusing to accept a reasonable offer of compensation for the said property. The case signifies a departure from the controversial willing-buyer willing-seller principle and it can now be accepted that the State may expropriate property in instances where the seller has turned down a reasonable offer of compensation. However, it must be noted that where the determination of compensation takes place after expropriation, it must be done as soon as reasonably possible in accordance with Section 25(3). Despite the Court’s effort in expediting the restitution process, the directive stipulating that the landowner must be compensated within a reasonable period after expropriation could lead to numerous difficulties especially on the part of the landowner. In addition, the
Court's effort to prevent lengthy delays in respect of payment of compensation after expropriation is welcomed, but there exists the possibility of the landowner being frustrated by delays. The lack of clarity in terms of the time-frame for compensation and the failure to define "as soon as reasonably possible" may lead to difficulties in the future. Despite the landowner being guaranteed access to Courts in terms of Section 34 of the Constitution and just and equitable outcomes in terms of Section 25(3) and Section 26(3) of the Constitution, post-expropriation compensation could unduly burden the landowner in terms of financial difficulties and exorbitant litigation costs that may arise if payment of compensation is unduly delayed. However, the judgement serves as a warning to landowners who choose to deliberately frustrate the land reform process. The issue of the discrepancy between Section 12 of the Expropriation Act 63 of 1975 and Section 25(3) of the Constitution has not been resolved by the Constitutional Court. It must be noted that the discrepancy goes to the root of the problem in calculating just and equitable compensation. A huge positive to emerge from the case is the realisation and willingness to ensure the speeding up of the land reform process by the necessary structures against a backdrop of redressing land inequalities and safeguarding the rights of the landowners. The Constitutional Court has cleared the path for government to expedite the land reform process and it is suggested that similar cases be dealt with in the same manner.

**Conclusions**

There is no doubt that the current legislative framework regulating expropriations in South Africa is far from ideal. The discord between the Expropriation Act 63 of 1975 and the Constitution has been blamed for the slow progress made in rectifying the land issues of the past. However, Government, rather than blaming land legislation, needs to take a closer look at implementation of the legislation and those state officials who are failing in their tasks to implement such legislation (Van Dalsen, 2017). The call by President Zuma for a pre-colonial audit of land ownership during his State of the Nation address may sound good politically, but such action could take years to complete, especially in light of the lack of a clear time-frame in which to conduct such a broad and financially demanding task (Claassens, 1993). The constitutional dimension of land reform encapsulates an expropriation landscape inclusive of compensation and recent pronouncements denouncing compensation appears to be short-sighted and ignorant of the deleterious consequences that could arise. As a starting point, it is imperative to move away from ill-informed statements and debates and back up words with action. An assessment of past mistakes is crucial to improving the management of the process. The roles of Organs of State must be clearly defined and understood and realistic objectives must be set and achieved by all role-players (Centre for Development and Enterprise Research Report, 2008). Government needs to strengthen and transform its land reform framework without impeding economic development, food security and improved livelihoods (Land Reform Policy Discussion Document, 2012). Expropriation is central to all three pillars of land reform and must be used by Government as the central means of undoing the social, economic and cultural
effects of the previous property landscape. The Constitutional Court has, to some degree, provided a way forward in terms of speeding up the land reform process. The decision allows for the State to expropriate property where the owner deliberately frustrates the land reform process and marks a significant move away from the willing-buyer willing-seller principle. It is surprising that the case has not opened the “floodgates” for more expropriation cases of this nature to take place. It is clear that Section 25 must be interpreted and applied against the backdrop of our unique past and the current deleterious circumstances. As a way forward, and to effectively address property rights and constitutional imperatives, it is recommended that the Expropriation Act 63 of 1975 be repealed and replaced with a proper framework that will administer expropriations effectively and efficiently whilst falling in line with the Constitution. Government cannot delay this process any further. On a positive note, it appears that this recommendation is closer to reality than we think.

**REFERENCES**


Du Toit, A. & Ally, F. 2003. The externalisation and casualisation of farm labour in Western Cape horticulture: A survey of patterns in the agricultural labour market in key Western Cape districts, and their implications for employment justice (No. 16). Centre for Rural Legal Studies.


Slade, B.V. 2014. Public purpose or public interest and third party transfers *PER*, p. 17.


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