

1. Mr. Chairman, and members of your committee, Good Morning.
2. My name is Brian Musto. I am a lawyer and active member of the financial services sector. I represent over 100 mostly urban taxpayers.
3. My supporters are not averse to land reform but not if it involves the destruction of property rights which will irreparably harm the economy.
4. As you know, and as Minister Tito Mboweni in his MTBS has pointed out, South Africa is in serious financial trouble and can no longer afford expensive populist policies.
5. The Economist says there are no quick fixes for South Africa's economy and we wait with baited breath for some glimmer of hope from President Ramaphosa's investment summit which kicks off today.
6. Given this economic backdrop, why are some still advocating policies of expropriation that have failed miserably in Zimbabwe leading to economic collapse, as well as the exodus of hundreds of thousands of Zimbabweans who now earn their livelihood in South Africa ?

7. The economy of Venezuela, which attempted to replace farmers with peasants on expropriated land, is in free fall as its citizens continue to flee the country. Its inflation rate will hit 10 million percent in 2019.
8. Because unemployment is such a huge problem in South Africa, politicians keep scratching their heads for a quick fix. The EFF's slogan "Expropriation without compensation" was adopted largely under the influence of the populist Jacob Zuma without thought for the economic consequences and especially its impact on the poor.
9. Section 25(4) of our Bill of Rights reaffirms the nation's commitment to land reform. Statistics show that to date the land reform process has virtually been completed. *Over the last 23 years, the land claims court has resolved **over 95%** of the claims that have arisen. Over **1.8 Million individuals** have received compensation either in the form of land or money and fewer than **3 500** claims remain unresolved."*
10. One now asks can further land reform be justified and should the State continue to meddle with property rights ?

11. The history of State intervention in agriculture is a sorry one and instead of improving their lot it has exacerbated the plight of the poor.
12. Virtually all players in the Land reform space in SA are agreed that land reform legislation such as ESTA (Act 62 of 1997), the Land Reform (Labour Tenants) Act (No. 3 of 1996) and Government's vacillating policy on land restitution over the years (White papers, Green papers and threats by successive Ministers of Agriculture) have spooked our farmers into fearing expropriation of large parts of their farms.
13. Given this environment, many farm owners have taken steps to reduce the number of farmworkers on their farms to the bare minimum fearing that these workers might become potential claimants to their farms.
14. In fact in the period 2004 to 2012 the IDC estimates that over 1 million jobs in the farming, fisheries and forestry sector were lost. Other data shows that most of these job losses were in the agricultural sector. (IDC - An overview of Key Trends since 1994).
15. This committee needs to face up to the hard reality that, to date, the raft of legislation and threats of expropriation have not led to prosperity but, in many cases, contributed to poverty and homelessness.

Billions have been wasted on failed farming ventures supported by state subsidies where new tractors now lie rusting in the veld. Not to mention widespread corruption, for example the Estina dairy project.

16. Right now in Zimbabwe the State is reversing its failed land policies and going in the opposite direction to SA. It has just put a stop to its failed Farm Mechanisation Scheme. Its Finance Minister Ncube announced
“Movement towards a market based supply and demand driven approach would be more efficient and sustainable and also reduce the greater burden of reliance on the fiscus.”

There is nothing like an empty treasury to give a State and a people a reality check causing a sea-change in direction and less interference in the economy.

17. The best thing Parliament can do at this time is to restore local and overseas investor confidence in property ownership by affirming that section 25 of the Constitution sets out the only basis by which land can be acquired by the State in the public interest, which includes to fulfil *“the nation’s commitment to land reform and to reforms to bring about equitable access to all South Africa’s resources”* as required by Section 25(4))

Many influential leaders including former Presidents

Thabo Mbeki and Kgalema Motlanthe as well as Patrice Motsepe support an unamended section 25. They prefer to protect the Bill of Rights not undermine it.

18. A clear exposition of the reasons why section 25 need not be amended to achieve the nation's commitment to land reform is contained in an article in the August 2018 issue of the SA Attorneys Journal De Rebus, a copy of which I am handing in.

19. The authors (Hopkins & Adendorff) make the following cogent points on section 25 and land expropriation and I quote:

“Thus the Constitution requires nothing more than that the owner of the land being expropriated receives whatever compensation is – in the totality of circumstances- just and equitable. It need not be market value and it need not be based on the willing buyer, willing seller principle.

20. They conclude:

“Thus looking at the structure of section 25 the following is apparent -

- - the amount of compensation may vary from anywhere between zero and market value depending on what is just and equitable in the circumstances;

- - A nominal amount of compensation may be regarded as just and equitable in some circumstances; and

- even where a nominal amount of compensation is

required the state may nonetheless elect not to pay anything at all, in which case the owner's rights may be limited, but the limitation could still be lawful if it is a reasonable and justifiable limitation in the circumstances. (section 25(8) and section 36).

21. Three cases of the latter possibility come to mind:

1) Premier Helen Zille has indicated that section 25 can be used to expropriate private land diminished by sand farming for minimal compensation in order to properly house the people of IsiQualo on adjacent land in the Cape Flats;

2) Mayor Herman Mashaba wants to expropriate absentee slumlords in Johannesburg in order to revamp 500 central city buildings into affordable housing units. It is probable that these buildings can be expropriated under section 25 for minimal or no compensation.

3) Organisations such as AFRA, which will speak to you just after me, say that farmland occupied by labour tenants should now be confiscated and given to the tenants. To the farm owner this is patently unfair Mr. Chairman. However, this is exactly the type of situation that section 25 is designed to address. It is up to the courts to ensure fairness and determine what compensation, if any, is payable to the farm owner.

TO CONCLUDE:

EXPROPRIATION of any property is a blunt instrument and an invasion of property rights whether compensation is paid or not.

It should only be used as the exception rather than the rule.

The Land Reform program is a Constitutional imperative but by 2018 most legitimate land claims have already been settled.

The majority of SA's population is urbanised and more assistance to those Municipalities who are providing low cost housing and serviced stands is needed. Here the cash strapped fiscus will have to spend money.

Reserve Bank Governor Lesetja Kganyago referring, inter alia, to land expropriation in Zimbabwe and Venezuela says "*Unorthodox policies have totally orthodox consequences*". He added that while populists were good at tapping into social frustrations they were not very good at economics. As a result their ideas routinely ended in disaster.

Hardly any countries in the world have tried expropriation without compensation. The few that have have done so with devastating economic consequences.

Mr. Chairman, I submit that this committee must do the right thing, not the populist thing. It must recommend that the current Section 25, without amendment, is the sole legitimate mechanism whereby the State can undertake land reform which will not undermine property rights, food security and jobs.

Finally, please remember that Parliament must always act legitimately.

Even if it has the power to do so, it should never approve amendments to the Constitution which, per se, are unjust and inequitable. To do otherwise would be to undermine the very fabric of our Constitution setting us on the path to an autocracy and abuse by whoever comes into power in the future.

I THANK YOU.