

THE National Land Committee, to which AFRA is affiliated, has for a long time argued that it would be disastrous to constitutionally entrench existing property rights as this would entrench the racially discriminatory results of apartheid land laws and policies and colonial conquest. If South Africa had had constitutional protection for property rights during the last century, forced removal and the racial prohibition of rights to own and lease land could never have taken place. Now that these processes have resulted in the dispossession of the majority of South Africans and the white ownership of 80% of South Africa's land, the situation is to be set in stone by a constitutional entrenchment of property rights. It is ironic that this result is justified by the principles of "integrity of title", "free contractual relations" and "security of investment" when these aspects of property rights were systematically denied to black South Africans until 1991.

We have nothing against these principles as they are universally associated with property rights. Our complaint is the unequal treatment of past black and present white property rights in the proposed property clause, drafted by a technical committee of the multiparty negotiating forum. While the proposed clause guarantees existing property rights and ties any expropriation of property to at least market value compensation, it makes restoration of land to victims of apartheid policies conditional on feasibility.

Debating property rights for the new South Africa

A technical committee of the multiparty negotiating forum has put forward a proposed clause which has evoked strong rejection from rural communities. Here we present a summary of the NLC's position on the property rights clause.

The technical committee's proposed property clause...

1. Every person shall have the right to acquire, hold and dispose of rights in property.
2. Expropriation of property by the state shall be permissible in the public interest and shall be subject to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, and the value of the owner's investment in it and the interests of those affected.
3. Nothing in this section shall preclude measures aimed at restoring rights in land to or compensating persons who have been dispossessed of rights in land as a consequence of any

racially discriminatory policy, where such restoration or compensation is feasible.

... and the NLC's alternative

1. Every person shall have the right to acquire, hold and dispose of rights in property. Property rights acquired in terms of or under laws which are or were in contravention of universally accepted human rights standards shall not enjoy this protection.
2. Expropriation of property by the state shall be permissible in the public interest and shall be subject to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, and the value of the owner's investment in it, the interests of those affected and available public resources.
3. Every person who did not receive effective compensation for removal from land when the removal was pursuant to apartheid policies and practices shall be entitled to the restoration of the land in question. Provided that where restoration is not feasible, such person will be entitled to compensation as set out in clause 2.