

Is Amending Section 25 of the South African constitution an end to the land reform debate?

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Abstract

Section 25(2) of the Constitution of South Africa protects property rights and the White Paper on Land Reform demonstrate tolerance and wisdom in the application of land reform policies. The central argument to this research was whether amendment of Section 25 (2) of the constitution to allow expropriation of land without compensation redresses redistribution of land for social cohesion and political stability. The researcher argues that, currently, Section 25 of the constitution provides for expropriation without compensation but at the same time protects property rights reducing the pace of redistribution. Hence, an amendment of section 25 (2) may remove the property right clause and accelerate expropriation without compensation. But whether the removal of the property right clause and acceleration of the process of expropriation without compensation will result to equitable and fair distribution of land to the majority of landless South Africans is not certain. The study concludes that, amendment of Section 25(2) is a justiable process and priorities must be given to equity in redistribution to the majority landless at the margins of communities and not elites. If the amendment of Section 25 (2) cannot guarantee equity in redistribution for all ill respective of race, social cohesion, political stability and economic growth, intra-racial tensions may emerge. Such tensions may further compound the land question and affects investors' confidence in South Africa.

Key words: land expropriation, intra-racial tension, social cohesion, political and traditional elitism, marginalised landless majority.

Introduction

The current study through extensive literature review purport that, if amendments of Section 25 (2) of the constitution is finalised without substantially addressing barriers other than the property clause as a prohibiting factors for expropriation without compensation in the past twenty five years. Then, amendment of Section 25 (2) to expropriation without compensation may not resolve issues of equity and redistribution in South Africa but herald a new land reform debate in future not premise along racial lines but intra racial lines. Expropriation of land without compensation has open a new debating frontier on land question in South Africa. The debate now focussed on the amendments of Section 25(2) of the South Africa Constitution to expropriate land without compensation. Peko (2018: 314) argues that, South Africa is the only country in African whose land was never returned to indigenous people post colonisation.

Opponents of land reform programme in South Africa are of the view that, one of the prohibiting factor in the successful implementation of the land reform programme in South Africa is Section 25 (2) of the South African constitution. The section protects property rights and obstruct expropriation of land without compensation. Advocates for the section (Section 25 (2)) purport that, the section provides for expropriation without compensation and failures to expropriate land without compensation can be attributed to government bureaucracy, corruption, poor management, elitism and political patronage. According to proponents, expropriation of land without compensation is covered in section 25 (2) of the South African constitution. The none expropriation of land without compensation twenty five years into the land reform programme of South Africa can solely be attributed to government inefficiencies and failures and not by Section 25 (2) of the constitution of South Africa.

However, those who are advocating for an amendment of Section 25 (2) believed that, if the section provides for expropriation without compensation, why are proponents for the section advocating for the section to remain unchanged? Those who glamour for expropriation without compensation further believed that, although section 25 appears to provide for expropriation without compensation, the application is implicit, ambiguous and open to interpretations. As a result, attempts by government to expropriate land protected under the property clause (Section 25 (2)) involves lengthy legal battles, time and costs to the fiscus due to legal challenges. These legal challenges results in wasteful use of tax payers' monies and polarised the nation along racial lines.

Hence, post-apartheid government has failed to expropriate any land without compensation for twenty five years. As Pheko (2018: 314) summarise, "Section 25 of the Constitution of South Africa is illogical and certain clause in the section has become an unmitigated disaster as prices of land which were expropriated from indigenous people are now inflated above market price in order to redistribute to the same indigenous folks". The current research paper seeks not to dispute whether post-apartheid land reform programme in South Africa was urgent for equity in land redistribution, social cohesion, political stability and overall economic growth because it was and still urgent. But the researcher opined that, the property clause enshrined in Section 25 (2) of the South African constitution, the market led approach, political patronage, corruption and elitism are amongst many factors that have prevented land expropriation without compensation in the post-apartheid era to be realised.

Literature review on land reform in South Africa

According to Molope (2018: 321), inequalities associated with land reform threatened post-apartheid democracy in South Africa and whether the discourse around the amendment of Section 25 (2) will put an end to land reform question in South Africa is debateable. Molope (2018: 322) focus on the views expressed by citizens during hearings with regard to possible amendments of Section 25 of the constitution nationwide. During the hearing (Molope, 2018: 323), it was found that, section 25 of the South African constitution that deals with land and property rights in South Africa has two main weakness:

(1) The property right clause though provides for expropriation without compensation, it is not explicit and has prevented expropriation of land without compensation post-apartheid era, and

(2) The approach which allows for a seller of land to be willing to sell for the government who within budgetary constraints willing to buy at inflated prices for redistribution to landless also poses a challenge to the reform process.

In line with these weaknesses, the researcher further add:

(3) The implicit nature of Section 25 (2), ambiguity and interpretations with regard to Section 25 of the constitution has prevented expropriation without compensation; and

(4) Government bureaucracy, corruption, poor management, elitism and political patronage have also contributed to the slow pace of land expropriation without compensation leading to the current land debate.

Therefore, the double challenge of property rights and market-led approach though are serious hindrance in implementing land reform programme in South Africa, they are not the only barriers to post-apartheid implementation. Furthermore, beneficiaries of land acquired through the reform process are skewed in favour of political and traditional elites to the neglect of the landless majority at the margins of society. The depletion of resources towards land reform process as government expenditures on education, health, housing, sanitation and social welfare safety nets are being expanded poses further hindrance. Molohe (2018: 321) therefore concluded that, land reform programme in South Africa has let indigenous Africans down as majority of the people continue to experience extreme poverty, high levels of unemployment that were to be resolved by the land reform programme if not of Section 25 (2) and the market-led approach.

There exist several studies on land reform (Dlamini and Ogunnubi, 2018:339; Mekoa, 2018: 361; Bradshaw and Ntsikelelo, 2018: 376; Malatji and Phago, 2018: 397) in South Africa that have specifically focussed on access, ownership, property rights, approaches and the land reform programme as whole. However, limited studies exist on the amendment of Section 25 (2) which protects property rights. The researcher opined that, amendment of Section 25 may eliminate the lengthy legal battle, fast-track reform process through expropriation without compensation, reduce wasteful use of state resources to fight court battles. Yet amending Section 25(2) cannot guarantee equity in redistribution, social cohesion and political stability rather it may further polarised communities along racial lines, generate intra-racial conflicts if ownership and access by the landless, marginalised and impoverished South Africans are not guaranteed in the amendment process.

The afore argument lends the researcher to predicts a future land reform debate in South Africa not premise along racial lines but on intra racial conflicts emerging from political and traditional patronages. The central questions now are; (1) will amendment of Section 25 brings an end to the debate on expropriation without compensation, (2) can expropriation without compensation redress equity in land redistribution, social cohesion and political stability, and (3) can the debate on equity in land redistribution be silenced forever if Section 25 is amended to expropriate land without compensation for policy certainty on the land question?

Ideological consideration behind Section 25 (2)

Saturnino et al.,(2006: 29) have argued that, the adoption of the property clause in Section 25 (2) of the South African constitution to land reform have not successfully addressed inequities in the redistribution of land in South Africa. If Section 25 (2) is seen as an impediment to the reform process, the researcher is of the view that, an alternative to the current Section 25 is needed to satisfy legitimate and urgent demand for social justice.

Although in his work, Hernando de Soto (2000) have argued that, legislative protection of property clause is one possible way the landless poor can gain access to formal property rights, move from informal arrangements to formal arrangements in the economy. In his work, de Soto's (2000) as quoted by Benjaminsen et al., (2008:29) argues that the poor and landless majority can only get access to capital through formal registration of their assets for integration into the formal economy through a four-stage procedure. In de Soto's view, property reforms lead to investment and economic growth and the government can generate revenue through taxation to finance the reform process. However, in South Africa Section 25 (2) guarantees property rights but the property rights clause protects the existing land owners and hinders redistribution to the landless majority-thus preventing the majority to gaining access to capital for investments.

The current research noted that, given the increasing political noises on land expropriation with compensation and the amendment of Section 25 (2) that protect property right, land reform programme in South Africa no longer enjoys the support it initially received at the start of the programme twenty five years ago. The researcher examined the social facilitation theory of Zajonc (1965) as the theoretical basis to debate whether amendment of Section 25 (2) of the South African constitution can meet the expectation of the landless majority in South Africa.

The social facilitation theory examines the influences of organisation factors (government) on the increase or decrease of performance level (Miles, 2014:281; Zajonc, 1965:269) of any organisation (government).The assumption was that, land reform programme driven by the government will accelerate redistribution, access and equity to landless majority while at the same time Section 25 (2) of the constitution must protects property rights for capital investments. The double objective for equity in re-distribution and protection of property are testament to the dilemma the South African government is encountering to execute land reform.

The dilemma was supported by a research done by the Thabo Mbeki Foundation, (2018: 294) which found that, it was a combination of ideological and pragmatic considerations that informed the protection of property in the South African constitution. Furthermore, the foundation stated that, 'the adoption of a 'willing seller, willing buyer' (market-friendly) approach to the acquisition of land for redistribution was noble for nation building and political stability'. However, two fundamental flaws exists-confusion in policy and expediency in practice that led to the failure of the state to focus on developmental agenda of the grass roots, respond to variation in local institutions and practices, respond to diverse set of developmental policies, power relations and elitism, global economic dynamics and political interference in defining the future outcomes of the land reform programme.

Although some studies (Sebopetsa and Bayat, 2018: 413; Golele, Mautjana and Makombe, 2018: 430; Okumbor, Sithole and Kirk, 2018:445; Sikwela, Tshuma and Tshabalala, 2018: 474) on land reform in South Africa have focussed on the approach and evaluation of the reform programme, these studies has never predicted a future land reform debate not based along racial lines. The researcher opined intra race conflicts may emerge if the amendments of Section 25 of the constitution do not address the increasing frictions within racial groupings, interrelationships amongst role players, patronage, elitism and vested interest by individual players within the communities to the neglect of the majority at the margin of society.

If equity in land redistribution and access to land is fundamental to social cohesion and political stability of South Africa, earlier mistakes by the government to consider both ideological and pragmatic considerations in executing the land reform programme in South Africa must be reconsidered. The government must either choose to protect property rights and allows the markets to determine the price of land through demand and supply. The government may then create a land sovereign fund where each and every citizen in the margins of society are entitle to a certain sum as set out by the state to buy land in the open market. In this regard, those who oppose amendments of Section 25(2) maybe guaranteed tenure security, policy certainty and re-investment in the land. On the other hand, if the government chooses to take a pragmatic route, then Section 25 (2) should be amended to remove the current ambiguity and pave the way for direct expropriation without compensation.

However, simplifying the debated on expropriation of land without compensation strictly along racial lines is also unjustified as there exist substantial portions of lands under the control of government and traditional authorities in South Africa. Furthermore, attributing the entire failure of the programme strictly on Section 25 (2) as preventing land reform in South Africa is postponing the problem rather than completely solving the problem. The assumption that, equity in redistribution along racial is important, placing control and power in the hands of the elite in the indigenous majority groupings and distributing land to the landless majority may never end the land reform debate in South Africa. The resurfacing of the land reform debate in 2018 and the general agreement by principle to amend the property clause (Section 25 (2)) of the constitution of South Africa even though there are no concrete data to prove the property clause is the sole prohibiting factor for expropriation without compensation is a case in point (Sebopetsa and Bayat, 2018: 413).

The acknowledgement on the part of the state that there were flaws in the implementation of the existing programme support those clamouring for none amendments of Section 25 (2) of the constitution. However, failures in land reform programme of South Africa cannot be solely attributed to Section 25 (2) of the constitution of South Africa (Bradshaw and Ntsikelelo, 2018: 376). While there exists a quantum of studies (Malatji and Phago, 2018: 397) debating the pros and cons of the different approaches, and or amalgamation of positive aspects of the different approaches to resolve the land question in South Africa. There have been little debate on alternative factors apart of the property right clause that must have led to failures in land reform and whether these variance rather than section 25 may equally be responsible for land reform failures (Sebopetsa and Bayat, 2018: 413)

Equity in redistribution through amendment of Section 25 (2)

Section 25 (2) of the Constitution of South Africa, the property clause, the Ideological and pragmatic approach adopted by post-apartheid government to land reform have failed the landless majority. Furthermore, works on the evaluation of the Land Reform programme in South Africa and ideological debates on land reform programme around the world especially the work of de Soto's (2000) have supported formalisation of land markets to enhance the access to land for near landless.

However, the land history of South Africa and the pattern of ownership followed dispossession of land from indigenous land owners through legislative processes along racial lines and not through the markets. Antwi, (2013: 379) is of the view that, many land reform programmes advocate for (i) equity in distribution and (ii) efficiency regarding land resources to improve productivity, income and the standard of living of citizens. But countries around the world are challenged to achieve appreciable levels of the both. The South African government in the combination of both ideological and pragmatic approach in the design and implementation of land reform programme fail to contextualise the historical patterns and landless majority concerns to the benefits of powerful lobbyist at the onset of the reform programme. This according to the Thabo Mbeki Foundation (2018:285) have resulted to the huge debate around expropriation without compensation. Although, the foundation fully support the land question to redress injustice of the past. However, the debate should be contextualised within a larger ideological and political perspective whose steps must be openly accountable to the people.

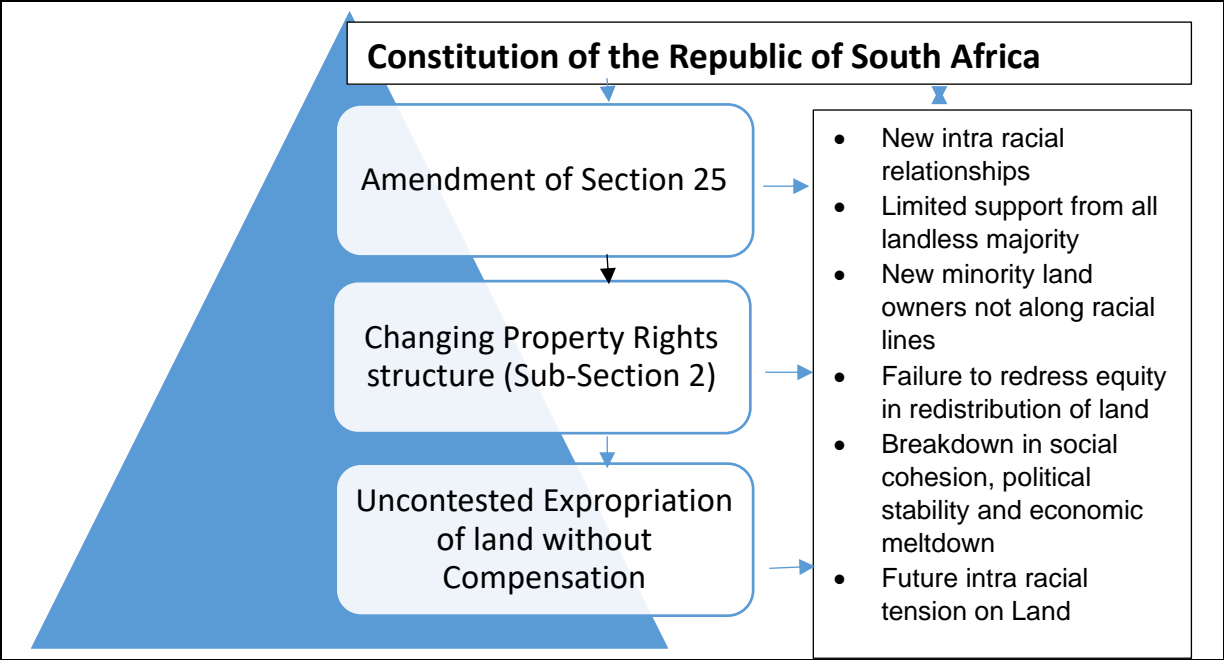
Makombe and Phago (2018, 280) have argued that, South African Liberation movements were premise on the question on the rights of the majority and the dispossession of land from the ethnic majority, the rights of all South African, peace and reconciliation was central to the political settlement to the neglect of the differences in origin, ethnicity and wealth (Makombe and Phago, 2018: 281), hence the rise of the debate on expropriation without compensation. The researcher designed a conceptual process to debate expropriation without compensation by amending Section 25 (2) as depicted in Figure one. The debate since 1994 have neglected the complex interrelationships existing within the landless communities and fail to envisage a future land reform debate not centre along racial lines.

The current South Africa constitution contains Section 25 which deals with land reform and sub-section (2) protects property rights. Section 25 though allows for expropriation of land without compensation, the property rights clause renders the section ambiguous and difficult to expropriate land due to its openness to litigations. Initially, Section 25 of the constitution was informed by ideological and pragmatic reasoning.

The conceptual design indicates that, amendment of section 25 (2) will replace the property clause and remove the ambiguity preventing expropriation without compensation. Once the clause is repealed, expropriation of land without compensation will happen without lengthy legal battles. However, the question

remain whether expropriated land will actually be redistributed to the indigenous landless majority or shared among indigenous elites. Concentration of land in the hands of indigenous minority elites may result in new intra racial relationships; limited support from the landless majority; new minority land owners not along racial lines; failure to redress equity in redistribution of land; breakdown in social cohesion, political instability and economic meltdown leading to future intra racial debate on Land. The new intra racial tension will herald a new land reform debate in South Africa not along racial lines and may led to future amendment of Section 25.

Figure one: Framework on land expropriation without compensation



Source: Researchers own design

The conceptual design reveals that, amendment of section 25 (2) without considering differences in origin, ethnicity and wealth may results in a new none racial minority who may be using land as a tool for political control, patronage and oppression within the very same community they purportedly claim to be liberating. The consequence are the never ending debate on land redistribution, economic meltdown, conflicts and political instability as a results of expropriation without compensation. Therefore, amending section 25 (2) with the intention to redress the land problem of landless majority may herald new land debate amongst indigenous communities leading to economic and political instability.

Can amendment of Section 25 silenced the land debate forever

Thabo Mbeki Foundation (2018:285) argues that, land expropriation without compensation poses strategic challenges in South Africa. The government view on national interest as a result of promise to the indigenous people to use its new found political power in 1994 to transfer land to indigenous majority for redress, social

justice and political stability have not been achieved. The support enjoyed by the current government pre-apartheid era was a response to the racist colonial domination of the indigenous African majority. Twenty five years into democracy, the government has fallen short of the expectations of the landless majority, hence, the basis for the land debate and amendment of Section 25. Central to the government ideological and political perspective was to build a nation that is none racial but unity in diversity.

(Antwi, 2018: 28) wrote, since the start of land reform post-apartheid, the efficiency of the use of the land resource as a key priority for the attainment of benefits for all South Africa have been compromised to achieve political rather than productivity goals which neglected equity in redistribution for social cohesion and political stability. The results are high levels of unemployment, food insecurity, gross under-utilisation of productive agricultural lands and increasing landless marginalised majority. Gwandure and Mayekiso (2018:489) opined that, in evaluating the impact of land reform on the lives of beneficiaries, systematic identification of positive or negative effects as well as the intended or unintended consequences on individual households, institutions and the environment to a given developmental agenda must be properly researched.

Thus the theory of change becomes central to this review because the theory articulates how a particular intervention will bring about results which involve actors of change intervention, their core roles, and their ability to overcome existing challenges and their influence on determinants to effect expected outcomes Van clay (2015: 20). The theory regarding the relationship between asset ownership and growth in conjunction with the theory of change can be used to evaluate land reform in economic sense for economic growth (Fao, 2007).

In South Africa, the primary objectives of the Land Reform programme were to address the injustices of the past, dignity to indigenous people, increase growth in production, guaranteed food security, job creation and graduate small-scale farmers to commercial farmers in the agricultural sector (DAFF, 2014). The land redistribution, tenure reform and land restitution sub-programmes were established to achieve these set objectives. A target of 30% of the total productive land in South Africa was to be redistributed by 2014 as set out in 1994 settlement. Since then, there have been five programmes (SLAG, LRAD, CASP, PLAS and RADP) in total between 1996 and 2016, which tried to deliver on the land redistribution imperative as argued by proponents of Section 25 (2) amendments. However in 2019, less than 15% of the total productive land as agreed in the onset of the land reform programme have been redistributed. Therefore, the debate around the amendments Section 25 (2) to expropriation land without compensation cannot be completely wrong.

Although some scholars of land reform programme in South Africa are of the view that, government inefficiency in the implementation of the land reform programme is the cause for the call to amend Section 25 of the constitution. However, Peters (2009: 1307) in his study argues that, none state interference in land reform processes can entrenched considerable inequality, intra and inter-group conflict, illegal sales by traditional leaders, and appropriation for private use by representatives of the state.

Discussions and key findings^[11]

In practice, land reform policy in South Africa have failed to an extent to increase productivity, increase investment and facilitate the use of land title as access to investment opportunities. What land reform programme did was to encourage speculations on land as Section 25 (2) protects property rights. Although the property right protection section of the constitution of South Africa allows for contested expropriation without compensation, the section is ambiguous and have slow down the reform process. Furthermore, the entire failure of the land reform process to deliver equity in redistribution of land cannot be attributed solely to Section 25 (2) of the constitution that protect property rights. The implementing agent (government) lack of foresight in formulating the original policies with focus on market ideologies to the neglect of the complex interrelationships at community levels and the assumption that landless majority are a homogeneous group was misguided.

The pragmatic approach of “Willing Buyer-Willing Seller” further lead to minority land owners valuating land properties above market prices and depleting the resource allocation earmark for redistribution of land. The resulting is further consolidation of power in the hand of few elite’ African minority. Furthermore, the increasing displacement of the landless farm workers (Africans) from farms continue to perpetuate the danger of conflicts over land rights, land ownership and further entrenched inequality through jobs loss, increase gender bias based on race, age, ethnicity, class and patronage.

The emerging majority African land owners in South Africa today are not homogeneous in terms of race but are homogeneous in terms of assets, property rights, control and resources to fight legal battles. Therefore debate on the amendment of Section 25 (2) that protects property rights but allows for contested expropriation without compensation should not only be argued along racial lines but along equity in redistribution for social cohesion. Sikor and Muller (2009:1309) concluded in a study that, state-led approaches to land reforms are limited in the achievement of desirable changes because it fails to attract support from relevant actors. This is the case with Section 25 (2) of the South African constitution which protects property rights with opponents arguing that, it prevents expropriation without compensation while proponents argues that it allows for expropriation without compensation.

The current review articulates, the complexity involved in the implementation of land reform programme in South Africa, challenges in the flexibility of the state to adapt to a constant changing tenure and authority relations on the ground. While those who are for or against amendment of Section 25 (2) may have valid arguments as to why the act should be amended or not, the land reform programme in South Africa has not redistributed land to the extent to which it was intended redistribute.

The continuously neglect of the vertical and horizontal complexity in relationships that exists within a state and the influence of these relationships towards land reform outcomes needs to be properly researched. The limits of Section 25 (2) within the context of a dynamic socio-economic and cultural matrices need to be properly understood. The presence of vested interests, cronyism, patronage, elitism and pressure grouping on opposite side of the divide on Section 25 (2) of the constitution of South Africa presents a new silent angle in what

constitute the land debate. The researcher further opined that, whether Section 25 (2) is amended or not, the new alternative arrangements for land expropriation without compensation may not provide for equity in the redress of land redistribution to the point of equity in redistribution.

Saturnino, *et al.*, (2006) in a study found that, the persistent of landless or near-landless by the majority are major driver of inequalities and redistribution of land is seen as a way out of extreme poverty in many developing countries. Therefore, if Section 25 (2) though provides for expropriation without compensation and at the same time act as an obstacle for the fast-tracking of the land reform process, then, its role in the land reform process needs to be re-evaluated. The reason are that, If the structure of the South African institutions responsible for land reform are structures of the state authorities, the power relations that existed before the building of the new nation state in 1994 never considered the post-nation building power relations that created inequality in land ownership in South Africa.

On the other hand, Benjaminsen *et al.*, (2008: 28) stated that, property formalisation similar to the protection of property rights enshrined in Section 25(2) of the South African constitution are nothing new in land reform literature. Debates in favour of property rights are that, fragmented holdings, collective use, and transhumance are obstacles to modernisation even when institutions are restructure to enforce the redress agenda. Views are that, formalisation enforce structured governance, order, and ultimately civilisation and provision of title deeds to landless is a path to sustainable development. However, formalisations through property rights have shown failures due increased conflicts, increasing income, asset inequality, legal pluralism, and the manipulation of the process by elites to their own advantage to the neglect of the landless and near landless(Besley and Burgess, 2000: 389).

In South Africa, the challenge with the property clause and failure to properly address the power and control of vested interest groups within the new nation state poses another danger even if Section 25 (2) is amended to expropriate land without compensation. A study by Peters (2009:1317) lay claim that the prevailing customary or communal law and tenure system in Africa were a joint construct of colonial officials and colonial African leaders. As such, the idea that local base community institutions in South Africa are alternatives to lead the distribution of land reform process also need proper contextual local research.

The design of the land reform project in South Africa twenty four years ago was premise on the assumption that, any redistribution of land not based on market forces and protection of property rights would create uncertainty and increase panic among investors to the detriment of economic growth and political stability. Though Sections 25(5) and 25(7) of the Constitution laid the foundations for land redistribution and land restitution with redistribution being the main thrust of the land reform programme in 1994. Policy uncertainty around Section 25 have not guaranteed investors' confidents due to the openness of the section to interpretations-hence the debate on expropriation without compensation in 2018. Furthermore, property rights establishes not only economic relationships among actors but influences who gets what under what conditions (Sikor and Muller, 2009:1309).

The re-emergence of the debate on the amendment of Section 25 (2) has contributed towards decreasing investors' confidence, volatility in the markets,

declining agricultural productivity and low economic growth in the face of rising unemployment. All these points to the harmful effects of the land debate on social cohesion, political stability as well as sustainable economic growth in South Africa. The inclusion of certain clauses (property rights, market approach) in the constitution couple with the bureaucratic nature of the state, inexperience executioners, complex inter-relationships, corruption, patronage and no appetite to strictly enforce aspects of the constitutions when need arises resulted in land reform failure.

Peters (2009:1317) opined that debates on land reform has moved up and down the ladder for over half a century with the older agreements of security of tenure resulting in increased investment and productivity to newer imperatives for poverty reduction, economic growth and property rights. The emergence of the debate in South Africa with regard to the amendment of Section 25 of the constitution in 2018 is evidence of the never ending importance of land reform process in the economic growth of a nation. The ideological and pragmatic approaches to the initial land reform programme which envisage a transfer of 25 million hectares of minority farmland to over 800,000 African farmers by 2014 has not been achieved.

But in the construct of the land reform programme, important questions such as ‘who are the minority (European Colonisers) who owns the land?’ and who are the majority indigenous Africans who does not own land’?-and the complex inter-relationships that exists within these groupings were not fully interrogated. In the discus, “minority land owners” are used as a single entity and a homogenous group of people in terms of land assets, ownerships, linear relationships and equal land sizes. The term “majority none land owners” are also considered as a single and homogenous group of people with no access to land, equal income distribution, equal access to assets, equal control and vested interest on land, none complex inter-relationships and equal standing within societies. These type of assumptions were wrong and the initial policies and approach to land reform premise on such misconception was bound to fail. Peters (2009:1317) comment that “when land reform became a development priority, past studies reveals intense competition over land, changing types of land transfers, claims of ingenuity in land conflicts, intersection of competition over land with that of over legitimate authority; and the challenges of growing social inequality and commodification of land”.

In economics, the so-called property rights school surmises that property rights evolve in response to changes in technological and economic conditions. Property rights are considered to be institutions that adjust to new cost-benefit relations, induced by changes in the costs and benefits of production. By implication, the premise for property rights to land is that they change in reaction to shifts in productive land values. Land reforms influence and are influenced by broader authority relations as they seek to enhance the land rights of disadvantaged groups by way of legal and administrative acts of the state. Lahiff et al., (2007:1417) posit that a more pro-poor pattern of growth is inevitable and rapid pace redistribution is needed to address inequalities. Land reform is a controversial subject and developing countries need to accelerate its implementation for rural development.

However, the proper implementation of land reform alters the distribution of economic power as well as the distribution of political power. Redistributing land

implies redistributing economic power in rural areas and change the existing power relations between central state and the customary authorities as well as advancing the interests of the landless and the land deprived. The interests of the landless and the land deprived are often neglected during the apportioning of control of power even though they are often the central subject in the design of the policy. Often, those vested with power to control and distribute the land to the landless and deprived people further perpetuate deprivation, inequality and patronage in exercising their power as a means to control the people and amass personal wealth. The result is often failure and re-emergence of the debate whether the reform process have actually addressed the fundamental issues it was intended to address.

The state-led model has been criticized for market-distortion and inefficient but such a distortion of normal, unequal market relations happens during the land reform process and once the transfer of land is completed, vibrant market relations could re-establish on the basis of a more equitable distribution of wealth. State-led land reform in a short-term suppress productivity but can be augmented by increase state investment, extension of substantial credit to beneficiaries and development of skills. In South Africa, the current debate on land expropriation without compensation focusses on the amendments of Section 25 (2). But this protection according to critics is a key contributor to the failure of the state to effectively distribute land in South Africa. The South African state may have adopted de Soto's approach on property formalisation and critics have identified weakness in terms of high costs of implementation, land markets to accentuate wealth differentiation, formalisation of existing inequalities, opportunistic land acquisition by the elite to the neglect of the landless and marginalised (Benjaminsen et al., 2008:29).

The approaches used by de Soto's were based on previous knowledge and experiences with top-down and customary tenure systems approaches. Critics were of the view that his approach has never been tested. However, the current debate on land expropriation without compensation and the emphasis to amend Section 25 (2) of the constitution in 2018 is practical test to some of the flaws associated with de Soto's approach. Although supporters of de Soto's approach argues that there are promising low-cost approaches to formalisation and the emerging land markets in Africa seem to enhance the access to land for near landless. This view has proven otherwise in the South African context as limited gains of the land reform process in the past twenty four years have further entrenched inequality, poverty, increase conflicts through the inclusion of the market mechanism as a means to gain access and formalise land rights of which the landless majority could not afford (Benjaminsen et al., 2008:29). The land policies promoted in Africa during were all based on the premise that customary systems did not provide the necessary security to ensure agricultural investment and productive use of land and the lack of security was thought to lie in the absence of clearly defined and enforceable property rights, the approach followed in the initial design of the land reform policy in South Africa (Peters, 2009:1318).

From Land Reform to Property rights

The debate surrounding land reform in South Africa exemplifies a wider approach in Africa as many African governments have chosen a diversity of strategies to distribute authority rather than focussing on the actual people who

need land for livelihood. In the development of land reform policies in Africa, there have been a mistaken argument that a community is a homogenous and the word "Community" has been centrally placed in the resolution of land questions across the continent. Yet in practice, community is heterogeneous and consists of varied inter-relations both vertical and horizontal as well as community can be influenced either explicitly or implicitly by vested interest (Sikor & Muller, 2009: 1307). How then do we shift our thinking in finding and developing a suitable approach that will deliver equality in land access by the people of a nation considering that community is not homogenous but heterogeneous and there are both vertical and horizontal interrelationships existing in a community is an ideological nightmare (Sikor & Muller, 2009: 1307).

The interactions among social actors may produce 'community' in the narrow sense if they attribute significant decision-making powers and benefits to collective actors reproducing, and generating social inequalities along economic, gender, racial lines (Sikor & muller, 2009: 1307). Furthermore, there exists rapidly rising number of national and international civil society organizations as community constituting a powerful bloc to bring changes at grass root level because it is an alternative to land reform processes which exclude local people from decision making and deprive them from benefits that accrue from their resource environment.

Changes in property occur by way of patterned shifts in property practices, as these make, modify, and unmake property relations in a process of constant negotiations and market forces. In defining the concept of abstract property, one should clearly evoke the notion of "abstract" versus "concrete property. While the former focuses on enforcement of legislations through court rulings and scholarly debates, the later deals with tangible objects such as land. Scholars have revealed differences in technological and economic factors underlie the observed variation in property rights to land and the close connection between property and the state is not a universal relationship but is contingent on particular historical conditions, that give rise to the nation state (Sikor & Muller, 2009: 1307). If the nature of property rights to land depends on the context, then land reform needs to be responsive to the variety of property arrangements on the ground and if property rights to land are sanctioned by multiple sources of authority, then land reforms cannot be the exclusive prerogative of the state but need to recognize community base institutions in the execution of land reform. Expropriation without compensation can be contingent on institutions that may take a wide variety of forms, such as village communities, lineages, clans, tribes, and indigenous groups. Yet together they attest to the significance of 'community' in processes of land reform and in an approach become adaptive to local conditions and changes over time rather than the local condition and environment adapting to land reform.

The complex nature of land restitution, land redistribution and land tenure reforms therefore, raises the questions on whether Section 25 (2) and the market-led approach to land reform twenty five years post-apartheid have delivered on equity and redistribution for social cohesion and political stability. If it has delivered, then those arguing for amendment of Section 25 (2) has no basis for an amaendment to the section. However, if it has not even though the section provides for expropriation without compensation, then those fighting for an amendments of Section 25 (2), argueing that, the section prevents expropriate without compensation has a valid reasons for amendment. Unless, proponents of none

amendments of the section provide evidence it has actually been used in the post-apartheid era and have found resonance within the context of South African society (Sikor & Muller, 2009: 1307), they should begin to have a mind shift on what is best for all South Africans.

CONCLUSION

The article concludes that, even if the number of minority land owners in South Africa are equal in numbers in terms of racial groupings without addressing the fundamental inequality in access and redistribution of land, expropriation without compensation is only building a base for a future land debate.

The only difference maybe that, Section 25 (2) will be amended and no longer ambiguous, it will allow for uncontested expropriation without compensation, property rights will still be upheld but equity in redistribution to the landless will still not have been achieved. Therefore, the very problem land reform intended to solve has been further entrenched and the right to land is an incidence of political, racial and social status indicating that social relationships entrenches power and control to the elites over the landless or near landless majority rather than bringing equality and reducing the power base of the powerful land owners. The review recommends that, in the amendments of Section 25 (2) on the expropriation without compensation, racial, political and social status relationships must be addressed. Secondly, the focus of the amendments should centre on equity in redistribution to the landless and marginalised segment of the population for sustained social cohesion and political stability.

The presence of vested interests, cronyism, patronage, elitism and pressure grouping on opposite side of the divide on Section 25 (2) of the constitution of South Africa presents a new silent angle in what constitute the land debate. In the formulating the initial policy on land reform in South Africa, emphasis was on the protection of property rights through the market transfer of land for redistribution. The state was the main implementing agents but little or no emphasis was given to local communities base institutions in addressing the complex inter-relationships that sway opinion with regard to the land question over the years.

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