



**THE ROLE OF PUBLIC PARTICIPATION IN REVIEWING LAND  
REDISTRIBUTION POLICY IN SOUTH AFRICA**

By

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**DECLARATION – PLAGIARISM**

I, Ntobeko Panuel Zondi declare that:

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## DEDICATION

Thank you, Lord, for your grace, love, encouragement, motivation, and wisdom that you gave me to be able to complete this dissertation.

Apostle Paul once said: “I can do all things through Christ who strengthens me”

(Philippians 4:13)

To God be the Glory!!

I dedicate this dissertation to my late grandfather Mr Mntungaziwa “Jack” Zondi, grandmother Mrs Dumazile Zondi, Aunt Nelly Zondi, my cousin sister Smangele “Prisca” Zondi, thank you for raising me, your love, care, support, motivation, and encouragement that you gave me while you were still alive, it is the reason that still keep and push me to persist thus far. *Thank you for believing in me!!*.

Most importantly, I dedicate this dissertation to my mother Miss Ncamisile Ntombiyenkosi Zondi, thank you for your support, patience, care, motivation, encouragement, doing my laundry, cleaning and cooking for me while I was away busy at research commons. *Thank you so much maZondi, you are the best Mom ever!! You are one in a million! You are Proverbs: 31 kind of a woman!!*. If I were to choose a mother again, I would choose you.

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## ABSTRACT

The post-apartheid South African democratic Constitution of 1996 provides for extensive participation of the public in the legislative and policy-making processes. Involving the citizens in policy decision-making processes deepens democracy, promotes active citizenship and good governance. During the apartheid regime, the then government passed racial, discriminatory legislation and gave supremacy to the white population. The Apartheid system of government formulated land legislations and policies which prohibited black people from owning land in areas occupied by the white community. After 1994, the ANC-led government adopted legislation and policies that were non-racial, non-sexist and non-discriminatory. Among them was the land policy with its objective to redistribute land equitably to all South Africans. However, even after over 25 years of democracy, land redistribution in South Africa has progressed slowly. In February 2018, parliament made a call to review section 25 of the Constitution on land redistribution to allow land expropriation without compensation in the interest of the public, where it called for extensive participation of the public. Therefore, this study examined the role of public participation in reviewing land redistribution policy in South Africa.

This was a purely qualitative approach that utilized desktop research and thematic content analysis to analyze the data collected. This study finds that the parliament of South Africa used public hearings, written and oral submissions as mechanisms to engage the public on whether section 25 of the Constitution on land redistribution should be reviewed or not to allow for expropriation of land without compensation in the interests of the public. The study finds that parliament received more than 700 000 written submissions made by the public. One issue that this study investigated was that about 65% of written submissions are not supporting the changing of section 25 of the Constitution. In comparison, 34% agreed on the amendment of the constitution, 1% was undecided on whether section 25 of the Constitution should be reviewed or not. This study recommended that if the majority of the public is opposing review of section 25 of the Constitution on land redistribution to allow mechanisms to expropriate land without compensation in the interest of the public, then the parliament must investigate what exactly is the impediment to slow progress of land redistribution in South Africa. This study further recommends that parliament draft, amend, and pass the land expropriation and land redistribution bill. It also recommended a review of the white paper on land redistribution policy since it shows slow progress to date.

**Key words: public participation, public policy, land redistribution, democracy and good governance**

## LIST OF ABBREVIATIONS AND ACRONYMS

PP	Public Participation
PPP	Public Participation Framework
ANC	African National Congress
PGM	Parliamentary Monitoring Group
CP	Citizen Participation
GG	Good Governance
DRDLR	Department of Rural Development and Land Reform
UDF	United Democratic Front
RDP	Reconstruction and Development Plan
NDP	National Development Plan
NA	National Assembly
NCOP	National Council of Provinces
EFF	Economic Freedom Fighters
SONA	State of the Nation Address
DALRRD	Department of Agriculture, Land Reform and Rural Development
BUSA	Business Unity South Africa
PLAAS	Institute for Poverty, Land and Agrarian Studies
LARC	Land and Accountability Research Centre
CDE	Centre for Development and Enterprise
AFRA	Association for Rural Advancement
ARD	Alliance for Rural Democracy

AZAPO	Azanian People Organization
WFP	Women on Farm Project
LAMOSA	Land Access Movement
NGO's	Non-Governmental Organizations
CBO's	Community Based Organizations
CSO's	Civil Society Organisations
CPA's	Communal Property Associations
GIAMA	Government Immovable Asset Management Act
SOE's	State Owned Enterprises
DG	Director-General
DDG	Deputy-Director General
KZN	KwaZulu-Natal
EC	Eastern Cape
NW	North West
GP	Gauteng Province
L	Limpopo
NC	Northern Cape
MP	Mpumalanga
WC	Western Cape
FS	Free State

## **Table of Contents**

DECLARATION – PLAGIARISM.....	1
DEDICATION.....	2
ACKNOWLEDGEMENTS.....	3
ABSTRACT.....	4
LIST OF ABBREVIATIONS AND ACRONYMS .....	6
<b>CHAPTER 1: INTRODUCTION AND BACKGROUND.....</b>	<b>12</b>
1.1 INTRODUCTION.....	12
1.2 BACKGROUND AND OUTLINE OF A RESEARCH PROBLEM.....	13
1.3 AIM OF THE RESEARCH .....	15
1.4 MAIN-RESEARCH QUESTION .....	15
1.4.1 SUB- RESEARCH QUESTIONS .....	15
1.5 MAIN-RESEARCH OBJECTIVE.....	15
1.5.1 SPECIFIC OBJECTIVES.....	15
1.6 METHODOLOGY.....	15
1.6.1 RESEARCH DESIGN.....	15
1.6.2 RESEARCH TECHNIQUES .....	16
1.6.3 SAMPLING METHODS .....	16
1.6.4 DATA COLLECTION METHODS.....	16
1.6.5 DATA ANALYSIS METHODS .....	17
1.7. STRUCTURE OF DISSERTATION.....	17
1.8. CONCLUSION .....	18
<b>CHAPTER 2: CONCEPTUAL AND THEORETICAL FRAMEWORK .....</b>	<b>18</b>
2.1. INTRODUCTION.....	18
2.2. CONCEPTUALIZING PUBLIC PARTICIPATION AND ITS RELATION TO GOOD GOVERNANCE.....	19
2.2.1. Transparency .....	21
2.2.2. Accountability .....	21
2.2.3. Rule of law.....	21
2.2.4. Responsiveness.....	21
2.3. INCREASING LEVELS OF PUBLIC IMPACT .....	22
2.3.1. Inform .....	22
2.3.2. Consult.....	22
2.3.3. Involve.....	22

2.3.4. Collaborate.....	23
2.3.5. Empower.....	23
2.4. MECHANISMS OF PUBLIC PARTICIPATION.....	23
2.4.1. Public hearings .....	23
2.4.2. Public meetings.....	24
2.4.3. Written submissions .....	24
2.4.4. Voting .....	24
2.4.5. Citizens survey .....	24
2.5. FACTORS AFFECTING EFFECTIVE PUBLIC PARTICIPATION .....	25
2.5.1. Democratization of the Policy- Decision-making and Implementation Processes.....	25
2.5.2. Provision of Information to Policy - Decision Makers and Implementers.....	25
2.5.3. Promoting Responsiveness to Public Needs.....	25
2.5.4. Control Mechanisms for the Making and Implementation of Policy Making.....	26
2.6. OBJECTIVES OF PUBLIC PARTICIPATION.....	26
2.7. CHALLENGES TO EFFECTIVE PUBLIC PARTICIPATION.....	27
2.8. BENEFITS OF PUBLIC PARTICIPATION.....	28
2.9. THEORETICAL FRAMEWORK .....	30
2.9.1. Types of participation and Non-Participation .....	30
2.10.1.1. Manipulation and Therapy .....	31
2.11.1.2. Informing, Consultation and Placation .....	31
2.14.1.5. Partnership, delegated power and Citizen control .....	32
2.10. CONCLUSION .....	33
<b>CHAPTER 3: LEGISLATIVE AND POLICY FRAMEWORK FOR PUBLIC PARTICIPATION IN SOUTH AFRICA .....</b>	<b>33</b>
3.1. INTRODUCTION.....	33
3.2. HISTORICAL BACKGROUND OF PUBLIC PARTICPATION IN THE APARTHIED REGIME IN SOUTH AFRICA.....	34
3.3. PUBLIC PARTICIPATION IN THE POST-APARTHEID SOUTH AFRICA.....	36
3.4. LEGISLATIVE AND POLICY FRAMEWORK FOR THE PROVISIONS OF PUBLIC PARTICIPATION IN SOUTH AFRICA. ....	37
3.4.1. Section 59 of the Constitution-Public access to and involvement in National Assembly .....	37
3.4.2. Section 72 of the Constitution - Public access and involvement in the National Council of Provinces .....	37

3.4.3. Section 118 of the Constitution-Public access to and involvement in provincial legislatures .....	37
3.4.5. Constitutional provisions for public participation at Local Government Level .....	38
3.4.5.1. The Municipal Systems Act No: 32 of 2000 .....	38
3.4.5.2. White Paper on Local Government, 1998.....	39
3.4.5.3. The Batho Pele Principles, 1997 .....	40
3.5. SOUTH AFRICAN PARLIAMENT POLICY GUIDELINES FOR SUBMISSIONS	42
3.6. CONCLUSION .....	44
<b>CHAPTER 4: LAND REDISTRIBUTION IN SOUTH AFRICA .....</b>	<b>45</b>
4.1. INTRODUCTION.....	45
4.2. LAND REDISTRIBUTION DURING THE APARTHEID ERA IN SOUTH AFRICA .....	46
4.2.1. Provision of land redistribution legislations and policies of the apartheid regime	47
4.2.1.1. Native Land Act 27 of 1913.....	47
4.2.1.2. Native Trust and Land Act 18 of 1936 .....	48
4.2.1.3. Group Areas Act 41 of 1950.....	48
4.2.1.3. Group Areas Act 36 of 1966.....	49
4.3. LAND REDISTRIBUTION IN THE POST-APARTHEID SOUTH AFRICA.....	49
4.3.1. Land redistribution legislations and policies in the post-apartheid South Africa...53	
4.3.1.1. Constitution of South Africa, 1996.....	53
4.3.1.2. Land Administration Act No 2 of 1995 .....	54
4.3.1.3. Land Titles Adjustment Act No 111 of 1993.....	54
4.3.1.4. Spatial Planning and Land Use Management Act No 16 of 2013 .....	54
4.3.1.5. Expropriation Act No 63 of 1975 .....	54
4.3.1.7. Transformation of Certain Rural Areas Act No 94 of 1998 .....	54
4.3.1.8. Property Valuation Act No 17 of 2014.....	54
4.3.1.9. Upgrading of Tenure Rights Act No 112 of 1991 .....	55
4.3.1.10. Land Reform: Provision of Land Assistance Act No 126 of 1993 .....	55
4.3.1.11. Restitution of land Rights Act No 21 of 1994 .....	55
4.3.1.12. Land Reform (Labour Tenants) Act No.3 of 1996 .....	55
4.3.1.13. Communal Property Associations Act No 28 of 1996.....	55
4.3.1.15. Distribution and Transfer of Certain State Land Act No 119 of 1993.....	56
4.3.1.16. Interim Protection of Informal Land Rights Act No 31 of 1996 .....	56
4.3.1.17. Electronic Deeds Registration Systems Act No 19 of 2019 .....	56

4.3.1.18. Draft Expropriation Bill.....	56
4.3.1.19. Reconstruction and Development Plan, 1994.....	56
4.3.1.21. Green Paper on South African Land Policy, 2011.....	57
4.3.1.22. Vision 2030 and the National Development Plan.....	57
4.4. STATE OF LAND REDISIRIBUTION IN POST-APARTHEID SOUTH AFRICA ..	58
4.5. CONCLUSION .....	66
CHAPTER 5: FINDINGS, INTERPRETATIONS AND ANALYSIS.....	67
5.1. INTRODUCTION.....	67
5.2. Stakeholders involved in the land redistribution policy review .....	67
5.2.1. Afri-business.....	68
5.2.2. Agri-SA .....	68
5.2.3. Business Unity South Africa (BUSA).....	68
5.2.4. Free Market Foundation (Rule of Law Project) .....	68
5.2.5. The F W de Clerk Foundation .....	69
5.2.6. Helen Suzman Foundation.....	69
5.2.7. Phuhlisani Foundation .....	69
5.2.8. Institute for Poverty, Land and Agrarian Studies (PLAAS).....	70
5.2.9. Socio-economic Rights Institute.....	70
5.2.10. Support Public Broadcasting .....	70
5.2.11. Centre for Applied Legal Studies .....	70
5.2.12. Equal Education Law Centre .....	70
5.2.13. Land and Accountability Research Centre (LARC).....	70
5.2.14. Centre for Development and Enterprise (CDE) .....	71
5.2.15. Agricultural Business Chamber.....	71
5.2.16. Alliance for Rural Democracy (ARD).....	71
5.2.17. Association for Rural Advancement (AFRA) .....	71
5.2.18. Azanian People Organization (AZAPO) .....	71
5.2.19. Women on Farms Project .....	72
5.2.20. Land access Movement .....	72
5.3. Mechanisms of public participation in the land redistribution policy review.....	72
5.3.1. Public hearings .....	72
5.3.2. Written submissions .....	80
5.3.3. Oral submissions .....	81

5.4. The views of the public on the current land redistribution policy .....	82
5.4.1. Arguments for amendment of section 25 of the Constitution on land redistribution in South Africa.....	82
5.4.2. Public views who said “yes” to review of section 25 of the Constitution on land expropriation without compensation in South Africa.....	83
5.4.3. Public views who said “No” to review of section 25 of the Constitution on land expropriation without compensation in South Africa.....	85
5.4.5. Views made by other civil society organizations on review of Section 25 of the Constitution on land reform.....	86
5.4.5. Proposal 1: Develop a new compensation regime.....	88
5.4.5.1. No compensation .....	88
5.4.5.2 Inner-city buildings with absentee landlords:.....	88
5.4.5.3. Informal settlement: .....	88
5.4.5.4. Labour tenants:.....	89
5.4.5.5. Publicly- owned land: .....	89
5.4.6.6. Proposal 2: Amend and pass the Expropriation Bill.....	89
5.4.5.7. Proposal 3: Take the tests cases to the Constitutional Court.....	90
5.4.5.8. Proposal 4: Draft and pass Land Redistribution Bill .....	90
5.4.5.9. Proposal 5: Draft and pass a protection of Informal Land Rights Bill .....	91
5.4.5.10. Proposal 6: Draft and pass a Land Records Bill .....	91
5.4.5.11. Proposal 7: Fix institutions and develop a new White Paper.....	92
5.5. CONCLUSION:.....	93
<b>CHAPTER 6: CONCLUSION AND RECOMMENDATIONS .....</b>	<b>94</b>
6.1 INTRODUCTION.....	94
6.2 CONCLUSION .....	94
6.3 RECOMMENDATIONS .....	95
7.BIBLIOGRAPHY .....	97

# CHAPTER 1: INTRODUCTION AND BACKGROUND

## 1.1 INTRODUCTION

This chapter will provide a background to the study by outlining a research problem, the research questions, and objectives. The chapter will further discuss the methodology used to collect data for this study and provide the structure for the dissertation.

## 1.2 BACKGROUND AND OUTLINE OF A RESEARCH PROBLEM

The apartheid regime in South Africa passed laws and policies that were racially discriminatory and gave supremacy to white people. In 1913, the government passed and introduced The Native Land Act No 27 of 1913 in South Africa. The Act's objectives were to prohibit black people from owning land in areas occupied by white people (Bester, 2011; Buys, 2012; Dada, 2015). In 1994, the new democratic South Africa that is non-racial was born. The goal of the democratic government was to transform South Africa to be a better country for all people who live in it and redress the injustices of the past (Kloopers and Pienaar, 2014; Magnusson, 2013; Holtzhausen, 2015). After 1994, the democratic government of South Africa adopted a new democratic Constitution, legislations and policies; among them was the land redistribution policy. Section 25(5) of the Constitution of the Republic of South Africa provides for Land redistribution: and provides that *“people or communities who were dispossessed of their land in terms of racially discriminatory laws after June 1913 to have land restored to them or be given equitable redress”* (Constitution of the Republic of South Africa, 1996).

However, in South Africa, land redistribution is still a key challenge that needs to be addressed. During the apartheid regime, the white community dominated land ownership, while the black community was barred from land ownership (Moseley, 2007). When the new democratic government came into power, black people owned only 13% of the land (Atuahene, 2011). Buys (2012) found that about 87% of rural land is owned by more than 50 000 white commercial farmers, while the black community primarily occupies land from former homelands. In 1994, the ANC led-government adopted and implemented new land redistribution policies to redress the injustices and inequalities of the past that the white authoritative government made. (FAO, 2009). The main aim of the land redistribution policies was to distribute land to all South Africans equally regardless of their race. However, Autehene (2011) shows that the implementation of land redistribution in South Africa still

showed slow progress to the extent that it has only distributed 8% of land to black South Africans by 2010. Moreover, the ultimate objective of the land redistribution policy in 1994 was to distribute about 30% of agricultural land to black communities by the year 2014 (DRDLR, 1997). However, the policy has managed thus far to transfer only 5% of the land (Moseley, 2007; Buys, 2012).

During the 2018/19 budget speech delivered on 11<sup>th</sup> May 2018 at the National Assembly, the former Minister of Rural Development and Land Reform in South Africa, Ms Matie Nkoana-Mashabane, released a comprehensive research report on state and private land audits between 1994-2018, which revealed a stark picture of inequalities in ownership of land in South Africa. The report clearly showed that, regarding individual land ownership, black South Africans still lag far behind and own only 4 % (percent) of land (DRDLR, Budget Speech 2018/19). This research report clearly shows that the process of redistribution of land in the country is slow.

To address this challenge, in February 2018, the parliament of the Republic of South Africa made a call to review section 25 of the Constitution on land redistribution; it has also called for extensive participation of the public through public hearings, written submissions, and oral presentations that were held around the country in July 2018 (Spies, 2018). Policies affect the public; therefore, it is necessary that the general public be involved in policy making (Hartslief, 2008; Khibha, 2017).

The post-apartheid democratic government in South Africa regards public participation as the cornerstone to deepen democracy and to fast track delivery of services to the people. This is further emphasized by Chapter 1 of the Constitution of South Africa, 1996, section 59 (e), which provides that “The National Assembly as the highest policy decision making body in South Africa, must facilitate public involvement in the legislative and other processes of the Assembly and its Committees”. Therefore, this call strengthens the importance of the role of public participation in policy-making processes. Section 195(e) also provides that “in terms of basic values and principles of governing public administration-citizens needs must be responded to, and the public must be encouraged to participate in policy making”.

However, Zondi (2014) argued that the participation of the public in South Africa is a constitutional mandate that is still not effectively implemented as it is intended. Yet, it plays a vital role towards strengthening democracy and good governance, to the extent that citizens feel excluded with developmental plans that fail to include public views and inputs on

strategies that will respond to the needs of the poor. Karamoko (2011) also argued that South Africa is in crisis to the point that public participation as a mechanism of participatory democracy and governance is still a challenge even after 25 years of democracy and the growth of service delivery public protest in the country a concern. Racial and social injustices, inequalities in land ownership, and public participation in policy-making processes are still a challenge which continues to exist in South Africa. Therefore, this study aimed to examine the nature and role of public participation in reviewing land redistribution policy in South Africa.

### **1.3 AIM OF THE RESEARCH**

To examine the extent and nature of public participation in reviewing land redistribution policy in South Africa.

### **1.4 MAIN-RESEARCH QUESTION**

What is the role of public participation in the land redistribution policy review?

#### **1.4.1 SUB- RESEARCH QUESTIONS**

- Who are individuals and civil society groups involved in the land redistribution policy review?
- What are the mechanisms of public participation in the land redistribution policy review?
- What are the views of the public on the current land redistribution policy?

### **1.5 MAIN-RESEARCH OBJECTIVE**

To examine the role of public participation in the land redistribution policy review

#### **1.5.1 SPECIFIC OBJECTIVES**

- To identify the individuals/civil society groups involved in the land redistribution policy review.
- To examine the mechanisms of public participation in the land policy redistribution review.
- To analyze the view of the public in the current land redistribution policy review

## **1.6 METHODOLOGY**

### **1.6.1 RESEARCH DESIGN**

Babie and Mouton (2011) state that research design focuses on the logic of the research. This study seeks to use a case study research design to examine the role of public participation in the land redistribution policy review in South Africa through public hearings, written submissions and oral presentations held by the parliament of the Republic of South Africa. This case study research design aimed to provide detailed deep information and understanding of the extent and nature of public participation in the land redistribution policy through analyzing written public submissions that contain the input of the citizens on review of section 25 of the constitution on land redistribution, final parliament reports of public hearings, written submissions and oral presentations that were held from all nine provinces in reviewing of section 25 of the constitution on land redistribution, final reports of the advisory panel appointed by the president on land redistribution, agriculture, and online newspapers reports on public hearings that were held around the country on section 25 of the constitution review on land redistribution. Clarke and Braun (2013) refer to case study research designs as the techniques that study people, individuals, civil societies, communities, and organizations to gain in-depth information and understand a particular social issue or actions.

### **1.6.2 RESEARCH TECHNIQUES**

This study used a qualitative approach. Terre Blanche et al. (2006) state that qualitative study aims to describe and understand social actions and events. This study analyzed written public submissions that contain the input of the citizens, final parliament reports of public hearings, written submissions, and oral presentations that were held from all nine provinces, final reports of the advisory panel that the president appointed on land redistribution and agriculture, and online newspapers report on public hearings that were held around the country of the section 25 of the constitution review on land redistribution.

### **1.6.3 SAMPLING METHODS**

Non-probability sampling was employed in this study, specifically purposive sampling. According to du Plooy-Cilliers, Davis and Bezuidenhout (2014), purposive sampling selects units of analysis that the researcher feels will provide relevant information. This study sampled public hearings, written public submissions and oral presentations that contained the views of the citizens, final parliament reports of public hearings that were held from all nine provinces, final reports of the advisory panel appointed by the president on land reform and

agriculture, and online newspapers reports on public hearings that were held around the country on review of the section 25 of the constitution on land redistribution. This data was retrieved from the parliament website.

#### **1.6.4 DATA COLLECTION METHODS**

This study used documents as secondary data sources, i.e. government published documents, newspapers, and speeches since it is a desktop study. Desktop research is not about collecting data but about reviewing already published (Ntuli, 2012). Ntuli (2012) further refers to desktop research as the searching for information using existing resources, such as the media, internet, research reports, and governmental publications. This study used written public submissions, public hearings, and oral submissions that contain the inputs and views of the citizens, final parliament reports of public hearings, written submissions, and that were held from all nine provinces, final reports of the presidential advisory panel on land reform and agriculture, and online newspapers reports on public hearings that were held around the country of the review of section 25 of the constitution on land redistribution.

#### **1.6.5 DATA ANALYSIS METHODS**

The qualitative data analysis approach to analyze data was employed in this study. Babie and Mouton (2011:490) refer to qualitative data analysis as a range of data collected using qualitative methods such as content analysis, discourse analysis, conversational analysis, multimodal conversational analysis, and semiotics. According to du Plooy-Cilliers, Davis and Bezuidenhout (2014), qualitative data analysis refers to in-depth analysis of the meanings and interpretations of the text such as journal articles, books, theses dissertations, the government published documents, newspaper articles, and research reports, to mention the few. This study used content analysis techniques to analyze data. Babie and Mouton (2011:491) define qualitative content analysis as a technique that explores phrases words within a wide range of texts such as books, chapters, books, essays, websites, interviews, newspaper articles, speeches, informal conversations, published government documents, research reports, journal articles, government media briefings, and thesis dissertations. According to du Plooy-Cilliers, Davis and Bezuidenhout (2014), qualitative content analysis refers to a comprehensive thematic analysis of the interpretations and meanings of text or words. This study used thematic content analysis techniques to analyze public hearings, written public submissions and oral presentations that contain the inputs of the citizens, final parliament reports of public

hearings that were held from all 9 provinces, final reports of the advisory panel appointed by the president on land reform and agriculture, and online newspapers reports on public hearings that were held around the country of the review of section 25 of the constitution on land redistribution. The analysis of this study was guided by the themes arising from the research questions.

## **1.7. STRUCTURE OF DISSERTATION**

This dissertation is organized into six chapters as follows:

### **Chapter One: Background and Introduction**

This chapter unpacks the research problem and background of land policy in South Africa. It also discusses the research design methodology of this study.

### **Chapter Two: Conceptual and Theoretical Framework**

This chapter explores the theoretical and conceptual framework pertaining to the role of public participation in the public policy making processes.

### **Chapter Three: Legislative and Policy Framework for Public Participation in South Africa**

This chapter discusses the legislative and policy framework that guides public participation in public-policy making in South Africa.

### **Chapter Four: Land redistribution in South Africa**

This chapter discusses land redistribution by looking at the apartheid era and its transition to post-apartheid South Africa.

### **Chapter Five: Findings, Interpretation and Analysis**

This chapter analyzed and interpreted data and findings explored from the parliament website thematically guided by the research questions.

### **Chapter Six: Conclusion and Recommendations**

This chapter concluded and made recommendations based on the main findings explored in this study.

## **1.8. CONCLUSION**

This chapter provided a background to the study by outlining a research problem, the research questions, and objectives. The chapter further discussed the methodology used to collect data for this study and provided the structure for the dissertation.

## **CHAPTER 2: CONCEPTUAL AND THEORETICAL FRAMEWORK**

### **2.1. INTRODUCTION**

This chapter provides a conceptual and theoretical basis for the study of public participation in the policy-making process by conceptualizing and theorizing public participation and its relation to good governance. This chapter will discuss the concepts related to the deepening of democracy and good governance. The chapter also discusses the mechanisms that the parliament and South African government is using to engage the public on policy issues, the factors affecting, mechanisms, levels of increasing public participation, objectives, challenges, benefits, advantages and disadvantages pertaining to the participation of the public on policy decision making processes.

### **2.2. CONCEPTUALIZING PUBLIC PARTICIPATION AND ITS RELATION TO GOOD GOVERNANCE.**

According to Harmse (2014), public participation involves civil society groups and individuals invited into spaces organized by the government to influence policy decision making. Public participation constitutionally allows the engagement and involvement of citizens in public administration processes (Njomane, 2009). Scott (2009) points out that public participation promotes citizens-centred development, planning and policy. Public participation in parliament policy decision-making deepens democracy and good governance (Davids, 2005). Public participation is a mechanism that the citizens use to exercise their constitutional right to influence public policies and demand services from the state.

Creighton (2005) states that involving the general public in developmental plans and activities allows them to express their views, challenges, concerns, needs and aspirations to the government. The Public Participation Framework (PPF) (2013) cited in Sefora (2017) describes public participation as a tool that is used by the legislative bodies, i.e. Parliament and legislatures in provinces, to invite the input of the public, interest groups and other relevant stakeholders.

According to Simon (2006), cited in Mukgamatha and Moikanyane (2018), public participation promotes active citizenship and participatory democracy through engaging the public in policy formulation and decision-making that directly affects them. Public participation gives citizens the opportunity to voice their opinions, views, and concerns regarding social issues such as land expropriation without compensation, poverty, unemployment, poor public healthcare facilities, gender-based violence, high rate of crime, poor education, etc. social injustices, and inequalities.

Freeman (2010) notes that public participation in governance is the direct or indirect engagement through representatives of concerned stakeholders, groups, organizations, people and civil society organizations in decision-making about developmental public policies, plans, projects or programs in which they have an interest.

Public participation in policy making gives government new ideas, information and resources when making decisions (Hyder et al., 2019). Rowe & Frewer (2006) refer to participation as a mechanism involving the public in social problem identification, policy formulation, agenda setting, decision-making, implementation, monitoring, and evaluation in a democratic state. Public participation is one strategy for strengthening liberal democracy and good governance. As stated by Bozo & Hiemer (2016), public participation promotes good governance, i.e. transparency, accountability, rule of law, and responsiveness of the state to the interests of the people.

According to World Bank (1994: xiv) cited in Pillay (2016: 24), good governance promotes effective and efficient functioning of the state institutions that are accountable to its citizens and allows them to participate in policy decision making to improve their living conditions. Good governance is a system of government which deepens democracy through maintaining the socio-economic well-being of the citizens by responding to their needs and aspirations (Seemela and Mkhonto, 2007:3). Good governance promotes the rule of law and respect for human rights.

Seemela and Mkhonto (2007:3) further point out that good governance values the needs, concerns and interests of the society through the following:

- Ensuring quality service delivery
- The relationship of the different spheres of government
- Socio-economic stability and well-being of the citizens

- Meeting the needs and aspirations of the public; and
- Deepening participatory democracy and governance

According to Keping (2018), good governance refers to government procedures that put the interest of the public at the centre of its decision-making processes. Good governance deepens the relationship between democratic government and civil society.

The principles of liberal democracy and good governance are accountability, transparency, rule of law, and responsiveness, as stated by Keping (2018). The principles are discussed below:

### **2.2.1. Transparency**

Transparency requires that governmental information must be appropriately communicated to the public through various media channels, awareness campaigns, and public meetings so that they can fully be informed, consulted and involved in the policy decision making, as per their constitutional right (Keping, 2018). Transparency promotes openness of a free flow of information on processes of the functioning of a democratic government to the citizens (Prinsloo, 2013). Sefora (2017) refers to transparency when the public has a right to access information freely from public institutions.

### **2.2.2. Accountability**

According to Keping (2018), accountability means that government officials must fulfil the functions and responsibilities of their positions to account to the public. Accountability emphasizes the duty that those in authority have to explain and justify their actions, decisions, functions or duties to the public (Ben-Zeev, 2012:) cited in Sefora (2017). Ratminto (2006) states that accountability includes accountability for the performance of state institutions and accountability for the use of state resources, i.e. public funds to provide services to the citizens.

### **2.2.3. Rule of law**

According to Keping (2018), the rule of law means that the law is the key constitutional democratic principle in public and in the political administration that should be obeyed by all the public office bearers and citizens, who are all equal before the law. For example, the Constitution of South Africa, which the public and public office bearers should obey. Good governance requires fair and impartial legislative frameworks. It also requires complete protection of human rights, social justice and equalities, particularly the disadvantaged and

marginalized. Impartial enforcement of laws requires the justice system to be independent, impartial and incorruptible police force (What is Good Governance, 2012) cited in Prinsloo (2013).

### 2.2.4. Responsiveness

According to Keping (2018), responsiveness means that public sector officials must respond to the needs and interests of citizens in a timely and responsible manner. Responsiveness entails public institutions being responsive to the needs of the public, including stakeholders (Prinsloo, 2013).

## 2.3. INCREASING LEVELS OF PUBLIC IMPACT

**Figure 1: Increasing levels of public impact**

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
<b>PUBLIC PARTICIPATION GOAL</b>	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decision.	To work directly with the public throughout the process to ensure that public issues and concerns are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
<b>PROMISE TO THE PUBLIC</b>	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and issues are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advise and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
<b>EXAMPLE TOOLS</b>	<ul style="list-style-type: none"> <li>• Fact sheets</li> <li>• Websites</li> <li>• Open houses</li> </ul>	<ul style="list-style-type: none"> <li>• Public comment</li> <li>• Focus groups</li> <li>• Surveys</li> <li>• Public meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Workshops</li> <li>• Deliberate polling</li> </ul>	<ul style="list-style-type: none"> <li>• Citizen Advisory committees</li> <li>• Consensus-building</li> <li>• Participatory decision-making</li> </ul>	<ul style="list-style-type: none"> <li>• Citizen juries</li> <li>• Ballots</li> <li>• Delegated decisions</li> </ul>

Source: [n.d]<[https://naaee.org/sites/default/files/iap\\_public\\_participation\\_spectrum.pdf](https://naaee.org/sites/default/files/iap_public_participation_spectrum.pdf).

### **2.3.1. Inform**

The intention of public participation is to provide the general public with balanced information that is detailed to facilitate them to have a full understanding of the problem, alternatives, and solutions (Mulgan and Blears, 2005:18).

### **2.3.2. Consult**

The goal of consultation in public participation is to obtain citizens feedback on the analysis of the problem, alternatives, and decisions to be taken to solve a particular public policy issue (Mulgan and Blears, 2005:18)

### **2.3.3. Involve**

Mulgan and Blears (2005:18) state that the goal of public participation is to work directly with the public throughout the public policy-decision making processes to ensure that the input, concerns, interests, demands, needs, voices, views, and aspirations of the public are consistently understood and considered.

### **2.3.4. Collaborate**

The goal of public participation in policy making is to partner with civil society groups, local NGO'S, international NGO's, international donors, policy communities, interests groups, non-profit, community-based organizations and other stakeholders in each aspect of the decision, including the development of alternatives and identification of the solutions to public policy issues (Mulgan and Blears, 2005:18).

### **2.3.5. Empower**

Mulgan and Blears (2005:18) point out that the goal of public participation is to put the citizens at the heart of policy decision making processes and to place final decision making in the hands of the public. The policies affect the public; therefore, parliament policy making must be citizen-centric.

## **2.4. MECHANISMS OF PUBLIC PARTICIPATION**

Since the adoption of the democratic Constitution of South Africa in 1996, the parliament of South Africa introduced various mechanisms to give citizens their constitutional right to participate in the legislative and policy- decision making processes. Citizen participation in policy making deepens participatory democracy, active citizenship and good governance. Public participation mechanisms used by the legislative authority and governmental bodies to

allow for extensive participation of the citizens in policy making in South Africa are briefly discussed below:

#### **2.4.1. Public hearings**

Smith (2003:41) writes that public hearings are a platform or space where the general citizens and other stakeholders are invited to participate in the policy making processes for solving socio-economic problems that affect them. Public hearings are driven by the legislature and all other government structures to deepen participatory democracy, active citizenship and good governance. Maloka (2000:116) is of the point that, besides parliamentary petitions and written submissions, through public hearings, the general citizens get an opportunity to participate by making a valuable input on public policies, bills and legislations.

#### **2.4.2. Public meetings**

Public meetings are a mechanism used to interact with citizens at a local level on the socio-economic problems that affect them on a daily basis. The public meetings are usually convened by the local leadership (ward councillors) and the ward committees to engage with the public on issues such as water, electricity, housing, health, and social development since local leadership is closer to the communities. Thomas (1995:12) mentions that the legislatures and other governmental bodies advertise the venue, time and date for the meetings schedules to engage the public in policy problems identification, formulation, implementation, monitoring and evaluation.

#### **2.4.3. Written submissions**

The legislature uses written submissions to invite the public to input policy issues such as land expropriation without compensation, unemployment, economic development and growth, poverty, social justice, inequalities, gender-based violence, and high rates of crime. Herman (2018) points out that the parliament of South Africa called for the extensive participation of the public in reviewing section 25 of the constitution on land redistribution through public hearings, oral presentations and written submissions.

#### **2.4.4. Voting**

The Constitution's Bill of Rights provides for the right of every citizen to vote for any candidate or political party of their choice. Voting is a mechanism that is used by the public to participate. Verber and Nie (1972:46) mention that campaigning and voting activities are two of the key strategies in which the citizens can make their voices heard. When the citizens of South Africa voted for the first democratic elections in 1994, they were promised a better

life that would improve their socio-economic well-being. The marginalized and disadvantaged communities are voting because they have the mindset that their votes deliver services and solve their social issues.

#### **2.4.5. Citizens survey**

Brinkerhoff (2002) states that the parliament and government use survey questionnaires as an instrument to engage the public in policy making processes. Citizens' responses to survey questionnaires are part of government programmes to assess whether the public is satisfied with the state's policies, developmental projects, programmes, and quality of services. Conyers (1982) points out that citizen's survey is an essential data collection tool to ensure citizen participation in policy making. The citizen surveys are conducted by the government officials who visit the disadvantaged and marginalized areas to listen to the concerns, views and needs. Citizens survey helps the parliament and government formulate public policies that will deliver according to the needs and interests of the citizens.

### **2.5. FACTORS AFFECTING EFFECTIVE PUBLIC PARTICIPATION**

The South African Constitution and democracy require and give the citizens the full right to access services and participate in government and parliamentary decision-making. However, Mafunisa and Maphunye (2005) identify the factors that affect the effective participation of the citizens in public policy issues, which are further discussed below:

#### **2.5.1. Democratization of the Policy- Decision-making and Implementation Processes**

The African National Congress (1994) state that democratization requires government operations and structures to be transformed to the extent that the general citizens are fully informed and involved in the policy decision making and implementation process. The functioning of the public institutions fully depends on its legitimacy, which derives from the general public's support. According to Fagence (1977), the involvement of the citizens in the processes of decision making and implementation makes a valuable contribution to the legitimacy of legislative and governmental bodies.

#### **2.5.2. Provision of Information to Policy - Decision Makers and Implementers**

The provision of information to policy decision makers and implementers is crucial for ensuring effective public participation. According to Craythorne (1997), to make sure that the public institutions attain the information it needs from the public that is supposed to deliver services to, it should first involve and engage with them in the whole process of policy making. Policy makers should make decisions that will respond to the desires and interests of

the public. Therefore, it is necessary that they make informed decisions. Moreover, taking the general public's input into account during public policy decision-making and implementation processes is important since it contributes extensively towards combating dictatorship, deepening participatory democracy, and good governance (Masango).

### **2.5.3. Promoting Responsiveness to Public Needs**

Kaufmann (1991) states that there are three important requirements for the responsiveness of public policy decision-makers and public officials to the demands and aspirations of the public: (i) the citizens should freely express their needs and demands, (ii) there should be the adequate perception of the expressed citizens needs by decision-makers and or public-office bearers and (iii) policy decision-makers and public officials should not only be willing to take the expressed needs of the public into consideration during policy decision-making and implementation processes but should actually implement the desires of the general public. As part of deepening constitutional democracy, the mandate of state institutions is to fulfil the citizen's constitutional rights to participate in the policy-decision making.

### **2.5.4. Control Mechanisms for the Making and Implementation of Policy Making**

Masango (2001) writes that public participation contributes not only to ensure that there are smooth processes of policy-making and implementation in place but also to make sure that all three levels of government (national, provincial and local) are managed in accordance with the pillars of effective participatory constitutional democracy and good governance. However, although public participation could serve as a control mechanism, it should not be based exclusively on mistrust since this may generate unnecessary conflict. Continuous effective participation of the public in policy making and implementation could serve as a mechanism to limit the abuse of power by public-office bearers. For example, an informed public could ensure that political-office bearers and government officials use their discretion in a responsive and responsible manner and also to hold them accountable.

## **2.6. OBJECTIVES OF PUBLIC PARTICIPATION**

Brinkerhoff and Crosby (2002) outline the main objectives of participation of the public in the matters of the legislative and government policy- decision making, amongst them, are:

- To increase the sustainability and effective implementation of new public policies.
- The aim of involving the public in policy making is to enhance the successful implementation of public policies and the delivery of quality services.
- To ensure greater responsiveness to the needs and demands of the citizens.

- To determine better solutions to policy problems and to increase the level of service delivery satisfaction to the citizens.
- To deepen democracy and good governance
- To increase the legitimacy, transparency, accountability, responsiveness and public support in policy making.
- To reduce citizens' opposition to a particular public policy.
- To put citizens at the centre of parliament and government policy making processes.
- To give citizens full control in policy formulation, designing, implementation and decision-making processes.

## **2.7. CHALLENGES TO EFFECTIVE PUBLIC PARTICIPATION**

McDaid & Kruger (2004), cited in Hoosen (2010), state that a challenge that limits effective participation of the public is that the public feels discouraged to participate in the legislative and policy making processes due to a perception that their views and concerns are not being heard by government, to the extent that it causes poor attendance of the citizens in public meetings called by government officials. Action 24 (2018) points out that even after 25 years of constitutional democracy, the parliament of South Africa is still striving to achieve meaningful public participation, and it is not satisfied with the involvement of the public in policy decisions. The unsatisfactory involvement in public participation is due to the challenges of inadequate resources on the side of the parliament, lack of public interest or knowledge, poor communication by the parliament, insufficient spaces to engage the public, absence of feedback, selection of the public vs open spaces, and public inability to influence policy outcomes (Scott, 2009; Ben-Zeev, 2012; Kleynhans, 2017; Parliamentary Monitoring Group, 2013) cited in (Action 24, 2018). Gaventa and Barret (2011), cited in Goosen (2015), state that public participation is constitutionally mandated, but a challenge is that many citizens are still not informed of their constitutional right to participate in government policy-decision making. Citizens lack of information on how government functions limit their participation in public affairs (Cloete, 1996).

Furthermore, Bekker (1996) identify other limitations to effective public participation in policy decision making processes, amongst them are; supporting the objectives of public administration, poor attendance of the public in meetings called by government, low public-participation levels, threats to the professional image of public service and administration, the

potential for conflict between government officials and the public, lack of government responses to the needs of the people, representativeness, costs, time, long term process, ignorance, lack of information, lack of communication by public officials to the citizens, lack of citizens interest on a particular public policy issue, no significant effect on final plans, legislature poor planning and implementation of policies.

Moreover, Dukeshire and Thurlow (2002) indicate that the challenges that still face the public's participation in policy making are, among others, that citizens lack understanding of government policy processes. These scholars state that, for the public to make an effective impact on public policies, it is important that they clearly understand the process of policy making first. The parliament of South Africa should provide workshops and awareness programmes, especially in the rural areas, to educate the public on the legislature and government policy making processes. Moreover, De Villiers (2001) identifies the challenges that hinder the public from participating effectively in public policy making, which is: time, lack of communication (mechanisms to communicate with the public informing them to participate on policy matters), transport (limited funds to transport the public to the spaces where they are called by government to participate in public policy issues) and education (illiteracy of citizens).

Swanepoel (1992:9-10) points out that many of the citizens who are disadvantaged and marginalized are illiterate, especially in the rural areas; therefore, the public feel alienated and may lack the interest to participate in policy issues. This author further states that the other reasons the public lacks interest in policy making processes are because they think that their views and voices won't be heard by the parliamentarians and government officials and that it won't make a valuable and effective effect. The education programmes provided by the parliament on the processes of policy making can help the public, community-based, non-profit, non-governmental, policy communities, interests groups, and other civil society groups to have knowledge on whether they should engage or not, and how they can influence a particular public policy.

## **2.8. BENEFITS OF PUBLIC PARTICIPATION**

There are various benefits of public participation in the policy-decision making processes. Andre et al. (2006:2), cited in Muronda (2017:61), state that public participation in policy making promotes democracy and good governance. Public participation promotes social justice, equality, human rights and inclusive socio-economic development in society

(Morebedi, 2015). The participation of the public in government affairs gives the citizens opportunity to shape development policies to respond to their needs and interests.

Sithole (2004:4), cited in Siphuma (2009:65), points out the benefits of public participation, which include the following:

- Helps to address the challenges and concerns of all stakeholders and parties affected by the social issue.
- Bring the public closer to shaping and designing public policies that will respond to their needs.
- It creates a better understanding of public developmental programmes and on how government functions.
- Improves service delivery.
- Identifies solutions and alternatives to address the social issues that are affecting the communities.

According to Clapper (1996:76), the process of public participation in the policy making process is the mechanism towards effective and efficient implementation of policies that are citizen-driven. Public participation leads to better policy decision making and implementation. Churchman and Sadan (2004) view public participation as having significant potential for the benefits of the public, communities, and societies as a whole, as it makes policy decisions able to respond to and meet the needs and demands of the public and also to gain support from the public officials.

Masotho (2013:31) state that the benefits of engaging the public in policy making processes are to increase the level of information in public, to better identify the needs and challenges that face societies, develop and empower the public, and promotes accountability of the government officials to the citizens.

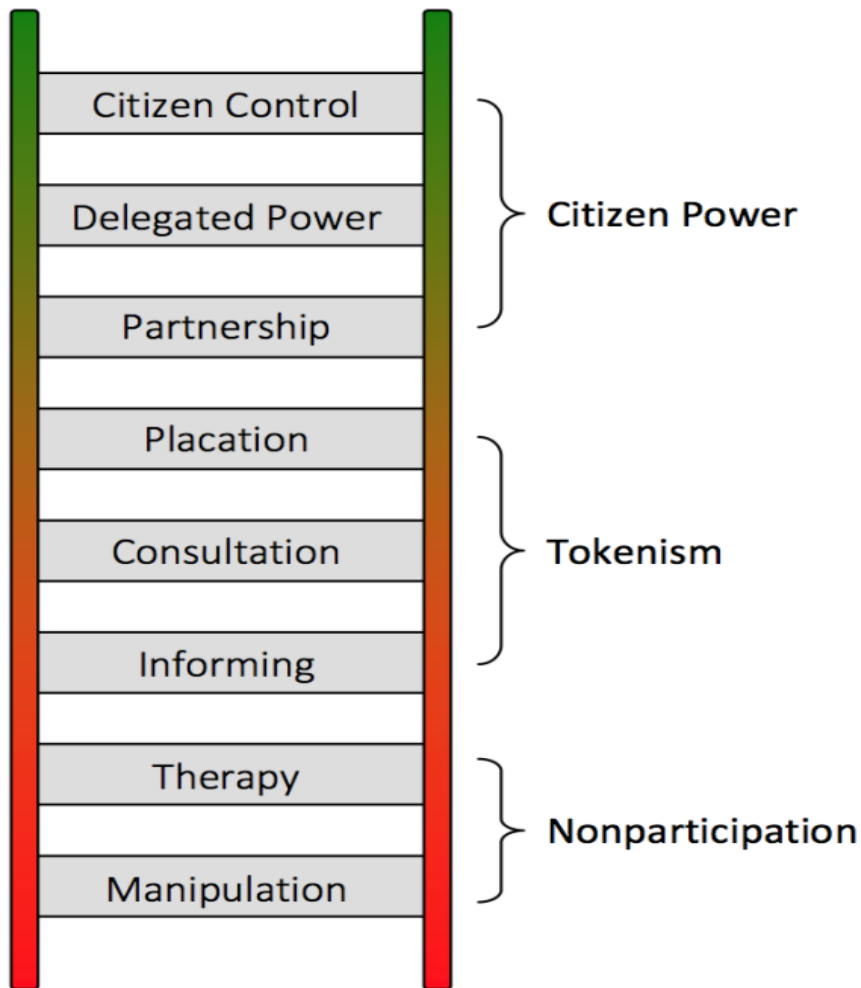
Matshe (2009:45) state that public participation strengthens effective and efficient governance systems and improves programme implementation. Public participation builds a strong relationship between government and the public. Midgley (1986:34), cited by Matshe (2009:44), indicates that public participation helps citizens make a positive input in government policy-making and the developmental agenda. The advantage of public participation is that it enhances the involvement of the public in developmental policies,

projects and programmes and gives them the space to identify the problems that affect them in society.

## **2.9. THEORETICAL FRAMEWORK**

This study used Arnstein's Ladder of Citizen Participation theory to critically analyse the participation of the public in the policy -decision making context and its relations to democracy and good governance.

### **Figure 1: A ladder of citizen participation**



Source: Arnstein (1969:3)

Source[n.d]<[https://www.researchgate.net/publication/322682350\\_arnstein's\\_ladder\\_of\\_citizen\\_participation\\_a\\_critical\\_discussion](https://www.researchgate.net/publication/322682350_arnstein's_ladder_of_citizen_participation_a_critical_discussion).

### 2.9.1. Types of participation and Non-Participation

The primary purpose of the ladder is to provide critical theoretical analysis of citizens' involvement in the policy decision making processes. Since the public policies directly affect the citizens, the ladder emphasizes that those in power should place the decision-making processes in the hands of the general public or stakeholders affected by the policy issue. The purpose and significance of this ladder are attested by Arnstein (1969) where she states that "participation without redistribution of power is an empty and frustrating process for the powerless". Arnstein theory critically discusses types of citizen's participation and non-participation in the policy making as a ladder with eight rungs, which are further discussed below:

### **2.10.1.1. Manipulation and Therapy**

The rungs at the bottom of the ladder are (1) Manipulation and (2) Therapy. These two rungs describe levels of non-participation that have been affected by some to substitute for genuine public participation. The objective of manipulation and therapy rungs is not to enable the public to participate in policy-making processes or program planning. However, the aim is to enable the public officials to “educate” and “cure” the general public. Arnstein (1969) states that through manipulation and therapy, “People are placed on a rubber stamp advisory committees or advisory boards for the express of “educating” them or engineering their support”. This approach to participation assumes that the public cannot make policy decisions. Moreover, under these conditions, the public lack the power to make sure that their views, opinions, concerns and inputs will be considered by government officials and legislative bodies. Furthermore, when the participation of the public is restricted to these levels, there is no follow through, no “power”, hence no assurance of changing the status quo of a particular public policy problem.

### **2.11.1.2. Informing, Consultation and Placation**

The second stage begins with the third rung of the ladder, which is; informing, consultation and placation that is called “tokenism”. At this rung, information flows from the public-office bearers to the public and other stakeholders with “no channel provided for feedback and no power for negotiation” (Arnstein, 1969:219). The most frequent instruments used by the government to invite the public for “participation” and communication during the process of “informing” include news media, pamphlets, posters, responses to inquiry and meetings, which discourage questioning and provide superficial and irrelevant information (Arnstein,1969:219).

Consultation, the fourth rung on the ladder, provides a two-way flow of information through public meetings, public hearings and surveys. However, the input of the public gathered through the public meetings and hearings process is rarely considered by the policymakers (Babu, 2018:244). Arnstein (1969:219) describes this rung in the following way: “What citizens achieve in all this activity is that they have “participated in participation”. And what the power holders achieve is the evidence that they have gone through the required motions of involving “those people”.

Placation is a higher level of tokenism because ground rules allow have-nots to advise but retain for the policy-makers the continued right to make final decisions on policy- decision-

making issues. Placation is where “citizens begin to gain influence through boards or committees, but they still be outnumbered or overruled, particularly when their opinions and suggestions are not favourable from the perspective of policy decision-makers.

#### **2.14.1.5. Partnership, delegated power and Citizen control**

The third stage of Arnstein’s ladder, i.e. public power, begins with the sixth rung, partnership. At this rung, “[Citizens and power holders] agree to share policy or programme planning and decision-making responsibilities through such structures as joint policy boards, planning committees and mechanism for resolving impasses” (Arnstein, 1969:222). Arnstein discusses some characteristics that effectively facilitate partnership, such as organized citizen’s leaders and civil society groups or organizations within the public and financial resources for technicians.

Delegated Power and Citizen Control emphasize citizens obtaining the majority of decision-making powers or full managerial power. Arnstein (1969:216) argues that “participation without the redistribution of power is an empty and frustrating process for the powerless”. Delegated power exists when citizens can assure accountability of a program by achieving dominant decision-making authority over the plan, policy or program (Arnstein,1969:222).

Pateman (1970) indicates that the foundation of public participation on policy making issues is constructed on citizens’ empowerment, informing, consultation, inclusion, and education, regarding the community, who are citizens instead of customers. Hogget and Thompson (2002) state that achieving better and more effective policy results involves gathering all citizens affected by the same problem or issue and engaging with them in discussions of policy-making issues. The process may facilitate the legitimacy of policy decisions and government (Hogget and Thompson, 2002). It is crucial for the government to first consult the public when developing policies or legislation and engage with them on social problems that affect them since public policies intention is to change the socio-economic well-being of the lives of the citizens. For example, the parliament conducted public hearings on review of the constitution section 25 to allow mechanisms for expropriating land without compensation in the general public's interest.

However, Friedman (1993) is concerned with two critical issues in public participation, which are; “inclusivity” and “representativity” of the citizens. The extent to which they include all interests and desires of the public, while the second concerns the extent to which relevant and interested stakeholders in policy, project legislation and programme

development are represented and included. Moreover, Friedman (1993) questions who are the authentic representatives of the public? Is there a universally accepted measure of who the “real representatives” of the public are? He further argues that public or community involvement is meaningless to participation. The claim that development is being discussed with the communities cannot be taken at face value (Friedman, 1993). Involving the public in policy making enhances and deepens democracy and sound governance principles, i.e. participation, transparency, openness, responsiveness, the rule of law, and accountability. This theory was used to analyse the findings for this study since the study's main aim is to examine the role of the public in policy-making processes with links to deepening democracy and good governance. Therefore, this theory is useful to this study since it explores the multifaceted role of public participation with specific reference to reviewing land redistribution policy in South Africa.

## **2.10. CONCLUSION**

This chapter aimed to provide a conceptual and theoretical basis for the study of public participation in policy-making by conceptualizing and theorizing public participation and its relations to good governance. This chapter will discuss the concepts related to the deepening of participatory democracy and good governance. The chapter also discussed the mechanisms that the national parliament and government of South Africa are using to engage the public on policy issues, the factors affecting, mechanisms, increasing levels of public impact, objectives, challenges, benefits, advantages and disadvantages pertaining to the participation of the public in policy decision-making processes.

# **CHAPTER 3: LEGISLATIVE AND POLICY FRAMEWORK FOR PUBLIC PARTICIPATION IN SOUTH AFRICA**

### **3.1. INTRODUCTION**

The Constitution of South Africa requires that all public institutions (national, provincial and local) facilitate the involvement of the public in the policy making processes. The democratic Constitution of South Africa intends to deepen liberal democracy and good governance to the extent that it responds effectively to the challenges of human rights, social justice and inequalities in South Africa. This chapter will discuss the historical background of public participation during the apartheid era and its transition to democracy. This chapter will then discuss the legislative and policy documents that govern the facilitation and involvement of the members of the public in the policy decision-making processes.

### **3.2. HISTORICAL BACKGROUND OF PUBLIC PARTICIPATION IN THE APARTHEID REGIME IN SOUTH AFRICA.**

During the apartheid era, most South African citizens were prohibited from participating in the legislative and in the processes of policy-decision making. The apartheid government formulated laws to govern the functioning of the state, which excluded the input and the voices of the other racial groups such as the black community in South Africans in the policy-making processes. The Comtask Report (1996:13) showed that the apartheid government was very secretive to the extent that the public was often prohibited from accessing the information on state affairs. The apartheid system of government restricted socio-economic and political rights for many black South Africans. This argument is supported by the Twenty-Year Review of *Democracy and Citizenship* Report (1994-2014:6), which states that during the apartheid regime, the relationship between government and most citizens was very confrontational and aggressive. This relationship led to various protests of the black population in South Africa against racist laws such as the Group Areas Act, the Bantu Education Act and the 1913 Land Act. Racism, apartheid, sexism and oppressive policies, bills, acts and legislation in South Africa created a system that developed social injustices and inequalities for years (Lues, 2014:4).

Makgamatha and Moikanye (2014:214) mention that during the apartheid system of government, black citizens were excluded from policy decision-making on socio-economic issues that affected them. Instead, the government of the day made decisions on its own and in the interest of the minority white population. Before 1994, the majority of the citizens, such as the historically marginalized and disadvantaged (Indians, Coloured and Africans), were not invited to make any inputs on developmental plans, projects, programmes and

policies that directly affected their socio-economic well-being (Makgamatha and Moikanye, 2014:214).

Williams (2006:3) outlines the historical background and roots of public participation in the apartheid regime, which is divided into various stages:

1. *The pre-1976 apartheid period:* a strategically dormant participatory phase where the largely passive dream for liberation and freedom to the point where unspeakable forms of oppression and exploitation resulted in imaginary spaces of public participation.
2. *The 1977-1983 apartheid period:* The death of Steve Biko in 1977 indicated that there is a need not only for civil society or community organization and mobilization at the community level but also for the public to take control of state affairs because government mandate and responsibility are to serve the interests and aspirations of all the citizens regardless of their race, sex or colour. After 1980, various spaces of civil society organizations and mobilization that existed in that period led to the formation of the United Democratic Front (UDF). The United Democratic Front (UDF) claimed participation spaces against the apartheid government in South Africa, sustaining community structures of the struggle for liberation, freedom, human rights, social justice and inequalities at the streets and nearby countries, in the name of the banned movements for liberation such as the African National Congress (ANC).
3. *The 1984-1989 apartheid period:* was characterized by the intense struggle against the apartheid government from the local to the international arenas, resulting in a range of violent campaigns and boycotts that were aimed at any sector connected to the apartheid system of government. The period of 1984-1989 created spaces that disrupted the functioning and governance of the apartheid government in South Africa.
4. *The 1990-1994 period (transition to democracy):* This period was featured by the legitimization of the liberation movements and civil society organizations consensual politics of negotiation leading to the negotiated settlement of a range of public participation spaces such as the 1994 Reconstruction and Development Plan and the 1996 Constitution of South Africa. The former resulted from citizen participation, and the latter established the spaces where all citizens were allowed to participate in local government planning, project, policies and programmes.

5. *The 1996-2000 democracy period:* The 1996-2000 democratic period brought transformation and social change that gave rise to the establishment of various types of development partnerships mediated by socio-historical relations of power and trust, resulting in largely truncated spaces of public participation.
6. *The 2000-2004 period and beyond:* The birth of democracy in South Africa led to transformative and effective civil society organizations epitomized by the Treatment Action Campaign. The TAC showed how powerful civil society organizations are to the extent that they effectively influenced public health care policies and convinced the government to provide all citizens affected with HIV/AIDS access to anti-retroviral treatments (ARV's).

### **3.3. PUBLIC PARTICIPATION IN POST-APARTHEID SOUTH AFRICA.**

After the 1994 general elections, the transition to democracy in South Africa marked a major change in the relationship between the government and the public. The country began to move from racially, discriminatory, and sexist defined forms of citizenship to a constitutional democracy that promotes and protects human rights, equalities, social justice and to change and improve the lives of all South Africans for the better (Twenty Year Review of *Democracy and Citizenship* Report, 1994-2014:6). The era of democracy in South Africa meant moving from a system where the government was illegitimate to black South Africans to a government with a constitutional democracy serving all citizens regardless of their race or sex. The shift from the apartheid system of government to a democratic constitutional government incorporated a focus on the need for participatory democracy, which allowed the citizens to engage with the state and to participate in public policymaking processes such as policy planning, formulation, decision-making, implementation and monitoring and evaluation (de Kadt and Cupido, 2016:17). The system of democracy in South Africa allows the public to hold public officials accountable so that democratic citizenship is not limited to voting in general elections.

According to the Twenty-Year Review Report (1994-2014:6), the democratic parliament and government of South Africa have introduced mechanisms to deepen participatory democracy and to promote active citizenship in public affairs, such as public hearings public meetings. izimbizo, written submissions, voting, petitions and citizens survey. Since the government is now led by the citizens of South Africa, the public now have a constitutional right to participate in the businesses of the highest legislative and policy decision-making bodies in South Africa i.e. the National Assembly, the National Council of Provinces and Provincial

Legislatures. The constitutional democratic system allows the public to support and vote for any political organization they believe can improve their socio-economic status. The public's participation in state affairs is vital as it seeks to get different views, concerns, voices and opinions from the citizens. Participatory democracy allows citizens to interact with the state on public policy decisions processes that directly affect them. Baloyi and Lubinga (2017) state that under the democratic era in South Africa, the government is committed to partner with the citizens to improve their socio-economic conditions, especially the poor, disadvantaged and marginalized.

### **3.4. LEGISLATIVE AND POLICY FRAMEWORK FOR THE PROVISIONS OF PUBLIC PARTICIPATION IN SOUTH AFRICA.**

The era of democracy in South Africa provides for different legislations and policies that govern and inform the facilitation and involvement of the public members in the legislative and government policy-making processes. The legislation and policies are provided at the houses of parliament, i.e. National Assembly, National Council of Provinces and Provincial Legislatures. The legislation and policies that govern participatory democracy are discussed starting with provisions of the sections of the democratic Constitution of South Africa:

#### **3.4.1. Section 59 of the Constitution-Public access to and involvement in the National Assembly**

Section 59(1): provides that the National Assembly must-(a) facilitate the public involvement in the legislative and other processes of the Assembly and its committees. (b) to conduct its business openly and transparently and hold its sittings and those of its committees in public. However, reasonable measures may be taken (i) to regulate public access, including access of the media, to the Assembly and its committees. Section 59 (2) states that the National Assembly may not exclude the public, including the media, from a committee's sitting unless it is reasonable and justifiable to do so in an open and democratic society.

#### **3.4.2. Section 72 of the Constitution - Public access and involvement in the National Council of Provinces**

Section 71(1) states that the National Council of Provinces must- (a) facilitate public involvement in the legislative and other processes of the Council and its committees. (b) to conduct business openly and transparently and hold its sittings and those of its committees in public, but reasonable measures may be taken-(i) to regulate public access, including access of the media, to the Council and its committees. Section 72(2) states that the National

Council of Provinces may not exclude the public, including the media, from sitting on the parliamentary committee unless it is reasonable and justifiable to do so in an open and democratic society.

### **3.4.3. Section 118 of the Constitution-Public access to and involvement in provincial legislatures**

Section 118(1) states that provincial legislatures must-(a) facilitate public involvement in the legislative and other processes of the legislature and its committees. (b) to conduct its business in an open and transparent manner, and holds its sittings and of its parliamentary committees in public but reasonable measures may be taken-(i) to regulate public access including access of the media to the legislature and its committees. Section 118 (2) provides that a provincial legislature may not exclude the public, including the media, from a committee's sitting unless it was reasonable and justifiable to do so in an open and democratic society.

### **3.4.5. Constitutional provisions for public participation at Local Government Level**

The local sphere of government is very critical because it is the level of government that is very close to the citizens where participatory democracy and good governance must be effectively deepened and promoted. The Constitution of South Africa of 1996 made provisions for the local sphere of government in South Africa. In terms of the local sphere of government, the Constitution of South Africa states that:

- Chapter 7 of (Local Government) section 152(a): “encourage the involvement of communities and community organizations in the matters of local government”.
- Chapter 10 of (Public Administration) section 195(1) (e): states that “in terms of the basic values and principles governing public administration –people’s needs must be responded to, and the public must be encouraged to participate in policy-making”.

#### **3.4.5.1. The Municipal Systems Act No: 32 of 2000**

The Municipal Systems Act defines ‘the legal nature of a municipality as including the local community within the municipal area, working in partnerships with the municipality’s political and administrative structure to provide for community participation in service delivery issues”. Chapter 4 of the Act provides for community participation on matters of local government in the following context:

- Development of a culture of community participation

- Mechanisms, processes and procedures for community participation
- Communication of information concerning community participation
- Public notice of meetings of municipal councils
- Admission of public to meetings
- Communications to the local community
- Documents to be made public

According to Section 4 in the Municipal Systems Act council has the duty:

- To encourage the involvement of the local community
- To consult the community about the level quality, range and impact of municipal services provided by the municipality, either directly or through another service provider

Section 5 state that members of the community have the right:

- To contribute to the decision-making processes of the municipality and submit written or oral recommendations, representations and complaints to the municipal council
- To be informed of decisions of the municipal council
- To regular disclosure of the affairs of the municipality, including its finances

The clearest and most specific requirements for public participation in local governance are outlined in Chapter 4. Hence, Section16 requires that:

- The Municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance and must.
- Encourage and create conditions for the community to participate in the affairs of the municipality, including in the IDP, performance management system, monitoring and review of performance. Preparation of the strategic budget decisions is municipal services.
- Contribute to building the capacity of the local community to participate in the affairs of the municipality and councillors and staff to foster community participation
- Section 42 provides that through appropriate mechanisms, processes and procedures, involve the local community in the development, implementation and review of the municipality's performance management system, and in particular, allow the

community to participate in the setting of appropriate key performance indicators and performance targets of the municipality.

#### **3.4.5.2. White Paper on Local Government, 1998**

According to the White Paper on Local Government 1998, municipalities require active participation by citizens at four levels:

- As voters: to ensure maximum democratic accountability of the elected political leadership for the policies they are empowered to promote.
- As citizens: who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that policies reflect community preferences as far as possible.
- Consumers and end-users expect value-for-money, affordable services and courteous and responsive service.
- As organized partners are involved in mobilizing resources for development via for-profit businesses, non-governmental organizations and community-based institutions.

The White Paper also states that ‘municipalities should develop mechanisms to ensure citizen participation in policy initiation, formulation and the M&E of decision-making and implementation’. The following approaches can assist in achieving this:

- Forums to allow organized formations to initiate policies and/or influence policy formulation, as well as participate in M&E
- Structured stakeholder involvement in certain Council committees, in particular, if these are issue-oriented committees with a limited lifespan rather than permanent structures
- Participatory budgeting initiatives aimed at linking community priorities to capital investment programmes
- Focus group and participatory action research conducted in partnership with NGOs and CBO’s can generate detailed information about a wide range of specific needs and values

#### **3.4.5.3. The Batho Pele Principles, 1997**

Batho Pele as a South African political initiative derived from the Sesotho language meaning “People first”. The initiative was first introduced by then-President Mandela’s administration on October 1, 1997, to transform the public service for better and quality delivery of goods

and services to the public. Batho Pele means putting other people first before your own needs in this context.

The Batho Pele initiative aims to enhance the quality and accessibility of government services by improving efficiency and accountability to the recipients of public goods and services. Batho Pele requires that eight initial service delivery principles be implemented, i.e. regularly consult with customers, set service standards, increase access to services, ensure higher levels of courtesy, provide more and better information about services, increase openness and transparency about services; remedy failures and mistakes, give the best possible value for money.

**Consultation:** The citizens should be consulted on the nature, quantity and quality of services delivered to determine their needs and demands. Citizens can consult through surveys, awareness campaigns, izimbizo, public meetings, public hearings, service delivery workshops.

**Service standards:** Citizens should be informed of what level and quality of public services they will receive from the government to know what to expect, e.g. service delivery charter, strategic plans, booklets with standards and service level agreements.

**Courtesy:** citizens should be treated with politeness and considerate behaviour.

**Access:** All citizens should have equal access to services provided by the government which they are entitled to, e.g. decentralized public offices (MPCC, one-stop centers etc.), extended working hours, use indigenous languages and sign languages, service delivery charters displayed, service delivery improvement plans displayed, improved service delivery to physically, socially and culturally disadvantaged, all frontline staff must wear name tags.

**Information:** Citizens should be given complete, accurate information about the public services they will receive, e.g. sign language, help desks, brochures, posters, press, information to be available at service points-in various official languages, induction training is made compulsory to all new employees.

### **Openness and transparency**

Citizens should be told how government departments are run, how much they cost and who is in charge. The citizens should know the officials of all government departments, e.g. Head of Units, Head of Departments, Ministers and MEC's. The management of public institutions

must be transparent and open to all staff members, e.g. appointment circulars. Regular staff meetings with Management must be encouraged.

### **Redress**

Establishing a mechanism for recording any public dissatisfaction, e.g. toll-free numbers, suggestion boxes and citizens service delivery satisfaction survey questionnaires. Each unit must have a complaint handling system in place. Staff must be trained to handle complaints effectively and efficiently.

### **Value for money**

Public services should be provided economically and efficiently to give citizens the best possible value for money, e.g. the use of expenditure controls improved internal controls (e.g. private use of phones, budget reviews).

## **3.5. SOUTH AFRICAN PARLIAMENT POLICY GUIDELINES FOR SUBMISSIONS**

South Africa Parliament Submissions [n.d] <<https://www.parliament.gov.za/submissions>. provides for the policy guidelines for submissions as follows:

The South African democratic Constitution makes provision for public involvement in law-making, oversight and other processes of Parliament. South Africa's democratic system not only provides for citizens to elect their representatives but also allows citizens to have a say on issues and matters that affect them.

One of the mechanisms that the public can make their voices heard is by making submissions to the National Assembly Committees, the National Council of Provinces Committees or Joint Committees. For submissions from the public to be effective, content and format need to be considered carefully. It is important that submission is easily read and understood by the Members of committees. This section will provide the guidelines of writing submission to parliament, which was drawn from the parliamentary website. The guidelines and steps are discussed below:

### **What is a submission?**

Parliament of South Africa submissions [n.d] <<https://www.parliament.gov.za/submissions>. state that:

A submission is the presentation of views or opinions on a matter or piece of legislation under consideration by a committee of Parliament.

Submissions may be presented in your language of choice.

Submissions are usually in written form. They can be reinforced through oral representation to the committee if the person or group who has made the submission is invited to make an oral presentation.

Making submissions creates an opportunity for any member of the public to propose changes or suggest possible actions to ensure that the laws passed by Parliament or any other matter being considered by Parliament serve their purpose.

### **Guidelines for Written Submissions**

When writing a submission to a committee, it usually is making comments about a Bill or topical issue. While there are differences in the way in which a submission is written for a Bill, there are basic principles that apply.

**Language usage** –Use respectful language. A submission that uses slanderous and disrespectful language will not be considered.

**Relevant** –Stick to the point. Your submission must be relevant to the matter being discussed. A committee may decide not to entertain a submission that is not relevant.

**Explicit** – Arrange your sentences and paragraphs in a logical order. Try to present a clear and logically developed argument. A submission that jumps from one issue to another and back again or mixes unrelated issues together may be confusing and decrease its impact.

**Concise** –Be simple and direct. Do not write more than is necessary. An overly long submission may weaken the key points you wish to address. The committee wants to know what you think and the evidence or arguments you have that support your view.

**Accurate** –Be accurate and complete. Gather and research all relevant information thoroughly. Make sure that your facts are correct. A submission with many errors will greatly reduce its impact.

**Conclusion** – Sum up or list the main points of your recommendations in a conclusion at the end of the submission or in an executive summary at the beginning.

**Sending your submission**– Submissions should reach the committee by or before the closing date for submissions and should be sent to the relevant Committee Secretary.

### **Presenting Oral Submissions**

Oral submissions give you a chance to reinforce what you have said in your written submission and allow the committee to clarify points raised in the submission. If the committee has decided to hear your submission, the Committee Secretary will contact you to make arrangements to hear your oral submission.

- Oral submissions can also be made at Public Hearings held by Committees.
- These submissions are recorded at the Public Hearing and transcribed.
- The relevant Committee/s looks at the evidence or opinions shared at the Hearing and discussed the contents thereof.
- If the view is supported by many people and if it has merit, the idea or concern stands a good chance of being included into the work of the relevant Committee/s.
- The Committee/s will make the final decision about the merit of an issue.

### **Guidelines for making oral submissions**

The format for the presentation of oral submissions varies between committees and also depends on the nature of the business.

Follow the same guidelines as for written submissions.

**Preparing for your oral submission** – As committee meetings are generally open to the public and the media, you may wish to attend one of these meetings before you present your oral submission. On the day of your oral submission, arrive early. It is a good idea to plan your presentation so that you can present all relevant points and leave enough time for questions.

**Visual Aids** – Parliament’s committee rooms are fitted with audio-visual equipment, and your oral submission may have more impact if it is reinforced with audio-visual aids.

**Language** – You may present your oral submission in any of the official languages of South Africa. Inform the Committee of your language choice before the time so that Parliament may make the necessary interpreting arrangements.

**Questions** – Be prepared for questions from Members of the Committee. It is a good idea to think about possible questions that may be asked and be prepared to answer them.

**Time allocation** – Discuss the amount of time allocated to you with the Committee Secretary beforehand. The committee makes the final decision on the time allocated for oral presentations.

### **3.6. CONCLUSION**

The Republic of South Africa Constitution requires all public institutions (national, provincial and local government) to facilitate and involve the public in policy-making processes. The intention of the democratic Constitution of South Africa is to deepen liberal democracy and good governance to the extent that it responds effectively to the challenges of human rights, social justice and inequalities in South Africa. This chapter discussed the historical background of public participation during the apartheid era and its transition to democracy. This chapter also discussed the pieces of legislations and policy documents that governs the facilitation and involvement of the public in the legislative and governmental policy decision-making processes.

## **CHAPTER 4: LAND REDISTRIBUTION IN SOUTH AFRICA**

### **4.1. INTRODUCTION**

This chapter aims to discuss the historical perspective of land redistribution in South Africa with specific reference to land policies of the apartheid era. The chapter also further discusses land redistribution in post-apartheid South Africa with specific reference to the current state of land redistribution policy in South Africa.

### **4.2. LAND REDISTRIBUTION DURING THE APARTHEID ERA IN SOUTH AFRICA**

Kloppers and Pienaar (2014) state that the need for land reform in South Africa has its origins in the historic undermining of black land ownership through colonial dispossession and discriminatory legislation that had been implemented since the beginning of the 20<sup>th</sup> century. The division of land between white people and black South Africans was distorted by the apartheid policy of separate development, which forced black South Africans into overpopulated homelands through the Native Land Act of 1913, the Native Trust and Land Act of 1936, the Group Areas Act of 1950.

According to Bosman (2007), the Native Land Act of 1913 did not allow black people (Africans, Coloured and Indians) to own land outside the native reserves, which then constituted only 8.3% of South Africa's land area, and in so doing formalized limitations on black land ownership. This Act is still regarded as an essential turning point in restricting the land rights of black South African. Native Trust and Land Act 18 of 1936 stripped black South Africans of their right to land or live outside demarcated areas without proper

authorization by the relevant authorities. This act intended to further the objective of racial segregation, which necessitated the need for land reform.

Moreover, according to Klooper and Pienaar (2014), black South Africans who owned land outside the reserves before 1913 and who were exempted from the original legislation in 1913 and 1936 were deprived of their land in a so-called second wave of evictions after 1950, primarily in terms of the Group Areas Act which came into force in 1950. These farmers were forced back to the homelands or were compelled.

According to the White Paper on Land Reform, approximately 3.5 million people were removed from rural and urban areas between 1960 and 1980. The right of people to own land in urban areas was only recognized again with the institution of the 99-year lease system in 1978 and the abolition of influx control in 1986. Adams (2000) states that, in the 1990s, 87 % of South Africa's land redistribution resources were owned by the white community (which made up only 12.6% of the population), and black South Africans owned only 13 % of the land. At the end of the apartheid era, approximately 82 million hectares of commercial farmland (86% of all farmland or 68% of the total surface area) was in the hands of the white population) and concentrated in the hands of approximately 60 000 owners. Over thirteen million black South African, who constituted the majority, were suffering from poverty, and they remained crowded into the former homelands, where land rights were generally unclear or contested, and the system of land administration was not clear (Lahiff, 2007:1).

The dispossession of the majority of the population's land by colonial and apartheid-era governments constitutes one of the key drivers of persistent wealth inequality in South Africa (Human Right Commission Report, 2018).

#### **4.2.1. Provision of land redistribution legislation and policies of the apartheid regime**

This section discusses the apartheid system of government land redistribution legislation and policies that were racially discriminatory and oppressive to the majority of the citizens in South Africa, especially the historically disadvantaged and marginalized such as (Africans, Coloureds and Indians). The legislation and policies are:

##### **4.2.1.1. Native Land Act 27 of 1913**

The Native Land Act was adopted by the apartheid system of government which forbade black people to own land in areas dominated by the white population. The Act was

discriminatory and racial. According to section 1 of the Act, except with the approval of the Governor-General, it stated that:

*“A native shall not enter into any agreement or transaction for the purchase, hire or other acquisition from a person other than a native, of any such land of any right thereto, interest therein, or servitude thereover”*; and

*“A person other than a native shall not enter into any agreement or transaction for the purchase, hire or other acquisition from a native of any such land of any right thereto, interest therein or servitude thereover”*.

Taking from the above phrase, the aim of this Act was to exclude black South Africans (Africans, Indians and Coloureds) to access land in the areas that were dominated by the white minority. The provisions of the Act made it clear that black people will not be entitled to the same services as the white people. Section 1 (2) of the Act further provided that:

*“From and after the commencement of this Act, no person other than a native shall purchase, hire or in any other manner whatever acquire any land in a scheduled native area or enter into any agreement or transaction for the purchase, hire or other acquisition, direct or indirect, of any such land or any right thereto or interest therein or servitude thereover, except with the approval of the Governor-General”*.

Section 1(4) of the act provided that if the public disobeyed the requirements of this legislation, they would get punishment where they would be fined or imprisoned with or without hard labour for six months. Section 5(1) of the Native Land Act made a provision to establish a commission that will be responsible to identify areas where black South Africans would not be allowed access to land or own any interest inland. Section 2(1) (a) of the Act provided that black people would occupy only 8% of land in the country. This Act showed that black South Africans were oppressed to the point that they were excluded from the socio-economic development plans of the racist government.

#### **4.2.1.2. Native Trust and Land Act 18 of 1936**

The Native Trust and Land Act provided for the formation of the South African Native Trust, which was the agency to administer trust land and *“to be administered for the settlement, support, benefit, and material welfare of the natives of the Union”*. Section 4(1) of the Native Trust and Land Act provided for the abolishment of black South Africans owning land and introduced trust tenure through the formation of the South African Development Trust, which

was the government body that was tasked to purchase land in “released areas” for the settlement of black people. Section 13 empowered the trustees of the Trust to expropriate land owned by natives outside a scheduled area for reasons of public health or for any other reason which would promote public welfare or be in the public interest. The Native Trust and Land Act was an important instrument used by the then government to facilitate its policy of racial segregation. The Act stripped black South Africans of their right to own land or even to live outside demarcated areas without proper authorization by the relevant authorities. It is clear that this Act furthered the objective of racial segregation, which eventually necessitated the need for land reform.

#### **4.2.1.3. Group Areas Act 41 of 1950**

The Group Areas Act of 1950, described as the “second wave of “evictions”, was formulated by the apartheid colonialist National Party government to forcibly remove black South Africans (Africans, Coloured and Indians) population from designated areas that were dominated by the white minority population. The aim of the Act was to provide “*for the establishment of group areas and the control of the acquisition of immovable property and the occupation of land and premises*”.

Section 2(1) of the Act established three groups of people - a white, a native and a coloured group. This section of the Act clearly stated that coloured population was defined as the people who were not members that forms part of white or native people. Section 2(1) of the Act provided the establishment of group areas designated for the exclusive use and ownership of members of a particular group. Section 3(1) of the Act stated that “*disqualified persons- persons who were not of the same as the group area-were not permitted to occupy any land or premises in a group area except under the authority of a permit, nor were they permitted to own immovable property in an area from which they were disqualified*”.

#### **4.2.1.3. Group Areas Act 36 of 1966**

The Group Areas Act 36 of 1966 is the legislation that complemented the Group Areas Act of 1950. The aim of the Act was to consolidate the law related to the establishment of group areas and to regulate the control of the acquisition of immovable property and the occupation of land and premises. Section 12 (1) (b) (1) of the Act was the amendment of the Act of 1950, which established three groups for the Act to separate South Africans: white, Bantu and coloured population groups. Section 13 of the Act prohibits the acquisition of immovable property in a controlled area, while section 20 restricts the occupation of land in a controlled

area. These provisions are made by sections 4 and 5 of the Act. Section 17(1) Act made provision that *“no person who is a member of any group shall occupy and no person shall allow any such person to occupy any land or premises in a specified area which was not lawfully occupied-except under the authority of a permit”*.

### **4.3. LAND REDISTRIBUTION IN THE POST-APARTHEID SOUTH AFRICA**

The issue of land redistribution was a priority on the agenda 65 years ago in the Freedom Charter, which was adopted at the Congress of the People at Kliptown, Johannesburg on June 25 and 26, 1955 where South African citizens declared that;

*“South Africa belongs to all who live in it, black and white, and that no government can justify claim and authority unless it is based on the will of all the people: that our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality”* (Freedom Charter, 1955).

The Freedom Charter further stated that:

*“Our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities; that only a democratic state, based on the will of all the people, can secure to all the birthright without distinction of colour, race, sex or belief”* (Freedom Charter, 1955).

The Freedom Charter promised that one day all citizens would live in a free, democratic, better and prosperous South Africa that does not discriminate on the basis of race, sex, colour and gender. The Congress of the People made a resolution which stated that;

*“The Land shall be shared among those who work it”; Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger”* (Freedom Charter, 1955).

When the citizens of South Africa voted in 1994 for the new Democratic President Nelson Mandela, they knew that it was a beginning of a new era in the country and believed that they

would never suffer again from being racially discriminated against and excluded from issues of human rights and social justice began by the colonial apartheid system of government. Land redistribution was once again one of the high issues on the agenda of the first democratic South African government's political administration, led by the late former President Nelson Mandela. Makhado (2012:3) indicated that before 1994, the white population owned 87% of the agricultural land, whilst the black community (Indians, Africans and Coloured) owned only 13% of the land in South Africa.

However, even after 25 years of constitutional democracy in South Africa, unequal access to the land remained a concern that still needed to be addressed by the ruling ANC-led government. The challenges of access to land prevent the citizens from enjoying their democratic constitutional rights of human dignity and security.

The post-apartheid South African government sought to address the socio-economic exclusions that were made by the authoritarian colonial government, such as social injustices, human rights and inequalities. To address these challenges, the post-apartheid government formulated legislations and policies on land redistribution that were informed and governed by the democratic Constitution of South Africa, 1996.

Moreover, the first democratic President of South Africa, Nelson Mandela, introduced a transformative strategy and a plan that was called the Reconstruction and Development Plan (RDP). The Reconstruction and Development Plan was an integrated development policy document that the first democratic government introduced with the aim to build a better and prosperous South Africa for all who live in it and also to address the socio-economic injustices and inequalities of the past (White Paper on Reconstruction and Development Plan, 1994:7). Moreover, the Reconstruction and Development Plan promised to transfer 30% of the medium to high-quality white minority-owned farms to black South Africans in the first five years after 1994 (Thwala, 2010). However, Thwala (2010) showed that land redistribution programmes in South Africa show slow progress. He further stated that over 13 million people in South Africa were still suffering from poverty and crowded in homelands (Thwala, 2010).

Adams (2000:9) further states that the land redistribution programme in the post-apartheid South Africa was established in the Reconstruction and Development Plan. The RDP policy was adopted and implemented in 1994 as part of the strategy to improve the socio-economic

welfare being of all the citizens for the better however the challenges of unequal ownership of land remains a concern even to date in South Africa.

This statement has been proven by the Land Audit research report that was released by the Department of Rural Development and Land Reform in the year 2017 on private land ownership, which revealed that white people own about 26 663 144 ha or 72% of the total 37 031 238 ha farms and agricultural holdings by individual landowners. The research report further revealed that Coloured communities own 5 371 383 ha or 15% of the land, Indians own 2 031 790 ha or 5% of the land, Africans own 1 314 873 ha or 4% of land. The Land Audit report also revealed gender inequalities on land, such as that individual males own 26 202 689 ha or 27% of the total farms and agricultural holdings owned by individual owners; followed by females at 4 871 013 or 13% (DRLR Land Audit Report,2017). This research report clearly shows that a large percentage of land is still under the hands and dominated by the white people in South Africa.

However, in February 2018, the issue of land redistribution has been one of the priority issues in the parliamentary public policy agenda setting and business processes, which was the motion raised by the political parties represented in parliament such as the (EFF) Economic Freedom Fighters (Goba, 2019). This issue is currently in a hot debate in parliament to the extent that they have appointed the parliamentary committee that was tasked for reviewing the Constitution section 25 on land redistribution. The parliamentary committee was appointed in February 2018.

The Parliamentary Constitutional Review Committee (CRC), which consisted of members from different political parties represented in parliament, was mandated by the two Houses of Parliament - the National Assembly (N.A) and the National Council of Provinces (NCOP), to embark on a process to establish the views of the public on the possible review of Section 25 of the Constitution, to allow for the State to expropriate land in the public interests without compensation and mechanisms for expropriating land without compensation. The Committee engaged in a public participation process intending to get the views of the public and stakeholders involved in land reform.

The process of public participation on land was informed by Section 59(1)(a) and 72(1)(a) of the Constitution, which provide that the National Assembly (N.A) and the National Council of Provinces (NCOP) facilitate the involvement of the public in the legislative and other processes of both Houses and their committees. The Committee, therefore, embarked on an

extensive public participation process by conducting public hearings, calling for public written submissions and oral submissions by members of the public to the committee as part of deepening participatory democracy and good governance.

Moreover, during the February 2019 State of the Nation Address (SONA), the President of South Africa, Mr Cyril Ramaphosa, emphasized that the government will support the work entrusted to the Parliament Constitutional Review Committee of reviewing Section 25 of the Constitution on expropriation of land without compensation (SONA, February 2019). The President further stated in his speech that, to ensure an effective and successful constitutional review process, they had tasked Mr David Mabuza, the Deputy President, to lead the Inter-Ministerial Committee on Land Reform with the intention to fast-track the land reform programme in South Africa. The Head of State also appointed an advisory panel of experts headed by Dr. Vuyo Mahlathi to advise government on its land reform programmes.

The President mandated the advisory panel on land reform to look at the challenges in the execution of the current land redistribution program and identify what can be done to resolve those looking at institutional mechanisms, funding, and implementation. He further mentioned that as part of accelerating land reform in South Africa, the government had identified land parcels owned by the state for redistribution. Moreover, The President further stated that there is a strategically located land that will also be released by government to address the needs and issues of human settlements, particularly in urban and peri-urban areas (SONA, February 2019).

In addition, it seems like the ruling ANC-led government shows commitment to achieve the objective of redistributing land equally amongst all South Africans. This is supported by the Department of Agriculture, Land Reform and Rural Development Budget Vote Speech that was presented on the 25 July 2019 by Minister Thoko Didiza at the National Council of Provinces, which stated that the department is committed to ensure that land redistribution is achieved through building institutions and positioning them to be fit for purpose (DALRRD Budget Vote, 2019).

The Minister further states that *“We need to be responsive to what our people say and rekindle the Spirit of “Batho Pele “to become once again a living reality in our day-to-day work”*. Bezerra (2018) argues that land is vital for the community for its historical and cultural value, and it is important for the conservation agency for its conservation value.

The Constitution of South Africa, 1996, made provisions of equal access to land for all South Africans regardless of race, sex and colour. Section 25 (1) -(7) of the Constitution of South Africa provides for land redistribution. The Constitutional provisions, legislation, and other policy documents that provide for land redistribution will be further discussed below:

#### **4.3.1. Land redistribution legislation and policies in the post-apartheid South Africa**

This section provides for legislations and policies which address the challenges of land redistribution in the post-apartheid democratic South Africa, which are:

##### **4.3.1.1. Constitution of South Africa, 1996**

Chapter 1 of the Constitution of South Africa (a) “provides for human dignity, the achievement of equality and the advancement of human rights and freedoms, (b) Non-racialism and non-sexism”. Section 25(5) provides for land redistribution. It places an obligation on the state to take legislative and other steps to ensure citizens can gain access to land on an equitable basis. Section 25(7) provides for land restitution. *“It creates a right for people or communities who were dispossessed of their land in terms of racially discriminatory laws after June 1913 to have that land restored to them or be given equitable redress”*. Section 25(6) provides that a person or community whose tenure rights are insecure as a result of past racially discriminatory laws or practices must be given -through law required by section 25(9) -tenure that is legally secure or comparable redress. The Constitution’s founding values other provisions in the Constitution generally, and the Bill of Rights, in particular, are also relevant to the achievement of land reform. Section 25(1) that prohibits the arbitrary deprivation of property-subject to section 25(8) that prevents provisions such as section 25(1) being used to impede the government from taking legislative and other steps to achieve land, water, and related reform. Necessary to enable redistribution of rights to land is the expropriation of land to make it available for redistribution. Section 25(2) is relevant in this regard, allowing for land to be expropriated in the public interest - which specifically includes land reform. Section 25(3) then sets out some of the factors that would be relevant in determining the question of compensation.

##### **4.3.1.2. Land Administration Act No 2 of 1995**

The Act provides for the delegation of powers and the assignment of the administration of laws regarding land matters to the provinces.

#### **4.3.1.3. Land Titles Adjustment Act No 111 of 1993**

The Act regulates the allocation or devolution of certain land in respect of which one or more persons claim ownership, but do not have registered title deeds in respect thereof.

#### **4.3.1.4. Spatial Planning and Land Use Management Act No 16 of 2013**

The Act provides for a framework for spatial planning and land use management in the Republic.

#### **4.3.1.5. Expropriation Act No 63 of 1975**

The Act provides for the expropriation of land and other property for public and certain other purposes as defined.

#### **4.3.1.7. Transformation of Certain Rural Areas Act No 94 of 1998**

The Act provides for the transfer of certain land to municipalities and certain other legal entities and for the removal of restrictions on the alienation of land.

#### **4.3.1.8. Property Valuation Act No 17 of 2014**

The Act provides for the establishment of the Office of the Valuer-General; for the regulation of the valuation of property that has been identified for land reform as well as property that has been identified for acquisition or disposal by a department.

#### **4.3.1.9. Upgrading of Tenure Rights Act No 112 of 1991**

The Act makes provision for the upgrading and conversion into ownership of certain rights graded in respect of land, as well as for the transfer of tribal land in full ownership to a community.

#### **4.3.1.10. Land Reform: Provision of Land Assistance Act No 126 of 1993**

This Act makes provision for the designation of certain land, the regulation of the subdivision of such land and the settlement of persons thereon. In addition, it provides for the acquisition, maintenance, planning development, improvement and disposal of property and the provision of financial assistance for land reform purposes.

#### **4.3.1.11. Restitution of land Rights Act No 21 of 1994**

In 1994, the first law to be passed by the first democratically elected parliament was the Restitution of Land Rights Act (Act 22 of 1994). This was done with the conscious acknowledgement that land justice is important to deal with the challenges of poverty, unemployment and inequality.

The Act makes provision for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices. To administer this task, the Act established a Commission on Restitution of Land Rights and a Land Claims Court. The Minister is authorized to purchase, acquire in any other manner or expropriate land or rights in land for the purpose of restitution awards.

#### **4.3.1.12. Land Reform (Labour Tenants) Act No.3 of 1996**

The Act makes provision for the security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants. It also makes provision for the acquisition of land and rights in land by labour tenants.

#### **4.3.1.13. Communal Property Associations Act No 28 of 1996**

The Act makes provision for communities to form juristic persons, to be known as communal property associations, in order to acquire, hold and manage property on a basis agreed to by members of a community. This has to be done in terms of a written constitution.

#### **4.3.1.14. Land Survey Act No 8 of 1997**

The Act makes provision for the regulation of the survey of land in South Africa.

#### **4.3.1.15. Distribution and Transfer of Certain State Land Act No 119 of 1993**

The Act makes provision for the distribution and transfer of certain land belonging to the State and designated by the Minister as land to be dealt with in accordance with the provisions of the Act.

#### **4.3.1.16. Interim Protection of Informal Land Rights Act No 31 of 1996**

The Act makes provision for temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law.

#### **4.3.1.17. Electronic Deeds Registration Systems Act No 19 of 2019**

The Act provides for electronic deeds registration.

#### **KwaZulu-Natal Ingonyama Trust Act, Act No. 3 of 1994**

The Act makes provision for establishment of the Ingonyama Trust and for certain land to be held in trust.

#### **4.3.1.18. Draft Expropriation Bill**

The Bill aims to provide for the expropriation of property for a public purpose or in the public interest and to provide for matters connected therewith.

#### **4.3.1.19. Reconstruction and Development Plan, 1994**

The Reconstruction and Development Plan was a policy framework that aimed to build a democratic, non-racial and non-sexist country that is meant to transform South Africa. The RDP was formulated and adopted under the following core fundamentals which are:

- Developing strong and stable democratic institutions
- Ensuring representivity and participation
- Ensuring that our country becomes a fully democratic, non-racial and non-sexist society
- Creating a sustainable and environmentally friendly growth and development path

The Reconstruction and Development Plan objectives were to address the issue of land redistribution as it states that *“No political democracy can survive and flourish if the majority of its people remains in poverty, without land, without their basic needs being met and without tangible prospects for a better life. Attacking poverty and deprivation is the first priority of the democratic Government”*

#### **4.3.1.20. White Paper on South African Land Policy, 1997**

The White Paper on Land Policy was adopted by the government to address the following land redistribution issues, which are:

- The injustices of the racially-based land dispossession
- The inequitable distribution of land ownership
- The need for security of tenure for all
- The need for sustained use of land
- The need for rapid use of land
- The need for rapid release of land for development
- The need to record and register all rights in property; and
- The need to administer public land in an effective manner

#### **4.3.1.21. Green Paper on South African Land Policy, 2011**

Green Paper on South African Land Policy objectives are:

- De-racializing the rural economy
- Democratic and equitable land allocation and use across race, gender and class; and
- A sustained production discipline for food security

Section 5 of the Green Paper on Land Policy provides for current challenges and Weaknesses: Rationale for Change, which are:

- The land acquisition strategy/willing-buyer willing-seller model (a distorted land market)
- A fragmented beneficiary support system
- Beneficiary selection for land redistribution
- Land administration/governance, especially in communal areas
- Meeting the 30% redistribution target by 2014
- Declining agricultural contribution to the GDP
- Unrelenting increase in rural unemployment and
- A problematic restitution model and its support system (communal property institutions and management).

#### **4.3.1.22. Vision 2030 and the National Development Plan**

The land reform is provided on the National Development Plan Vision 2030 in South Africa. Outcome 7 of the NDP provides for vibrant, sustainable, rural communities contributing towards food security for all. The National Development Plan (NDP) states that land reform will unlock the potential for a dynamic, growing and employment-creating agricultural sector. The NDP bases land reform on the following principles:

- Enable more rapid transfer of agricultural land to black beneficiaries without distorting land markets or business confidence in the agri-business sector.
- Ensure sustainable production on transferred land by making sure that human capabilities precede land transfer through incubators, learnerships, mentoring, apprenticeships and accelerated training in agricultural sciences.
- Establish monitoring institutions to protect land markets from opportunism, corruption and speculation.
- Bring land-transfer targets in line with fiscal and economic realities to ensure that land is successfully transferred.
- Offer white commercial farmers and organized industry bodies the opportunity to significantly contribute to the success of black farmers through mentorships, chain integration, preferential procurement and meaningful skills development.

Chapter 6 of the NDP provides the following key points for “An integrated and Inclusive Rural Economy” and land reform, which includes:

- Rural communities require greater social, economic and political opportunities to overcome poverty;
- To achieve this, agricultural development should introduce a land-reform and job-creation/ livelihood strategy that ensures rural communities have jobs;
- Ensure quality access to basic services, healthcare, education and food security;
- Plans for rural towns should be tailor-made according to the varying opportunities in each area; and,
- Inter-governmental relations should be addressed to improve rural governance.

Nelson Mandela once said in 1995: *“With freedom and democracy, came restoration of the right to land. And with it the opportunity to address the effects of centuries of dispossession and denial. At last we can, as a people, look our ancestors in the face and say: Your sacrifices were not in vain.”* (Nelson Mandela, 1995).

#### **4.4. STATE OF LAND REDISTRIBUTION IN POST-APARTHEID SOUTH AFRICA.**

The ANC-led government is trying by all means to address the issue of land redistribution in South Africa. The Department of Rural Development and Land Reform government has managed to settle about 80 664 claims that have benefitted more than 2. 1 million beneficiaries at the cost of R40 billion, inclusive of financial compensation to beneficiaries. 163 463 of these are the beneficiaries from female-headed households. Furthermore, the government has also restored more than 3. 5 million hectares of land which can be utilized as a catalyst for economic growth, development, agricultural production and food security (DRDLR, Annual Report, 2018 a). Bester (2011:64) attests that since 1994, the South African government has adopted and implemented many policies and legislations to address the challenges of land redistribution, but there is more that still needs to be done. However, the department has introduced various programmes such as integrated development for citizens to have equal access to land. The department is currently in the process of resolving systemic barriers, which have been found a challenge to the progress of beneficiaries. The intention of the implementation of the programme is to uplift black farmers, allocation of access to water for black farmers, and provision infrastructure as well as access to the markets. Moreover, during the 2018/19 financial year, the department also intends to settle about 1 151 land claims at the cost of R2 billion; and prioritize post-settlement support on restituted farms to the amount of R700 million (DRDLR, Annual Report, 2018).

According to the 2018/19 Annual Report tabled in parliament by the Minister of Rural Development and Land Reform stated that the department, during its 2018/19 financial year, distributed 9 675 5201 hectares of land to farm dwellers and labour tenants in the country (DRDLR Annual Report,2018/19). The department has managed to provide 7475 households with access to basic services, 1262 farmers trained, 7528 work opportunities were created through rural development and land reform programmes, about 2815 households were assisted with agricultural infrastructure tools to make their own production (DRDLR Strategic Plan, 2015-2020).

**Figure 1: The below table depicts Private Land vs State land. It also shows the difference between the province extent and the sum of private land, which is the unaccounted extent.**

Province	Province Extent (Ha)	State Owned Land Extent (Ha)	Private Owned Land Extent (Ha)	State Land %	Private Land %	Total Extent	Unaccounted Extent (Ha)	Unaccounted Extent (%)
Eastern Cape	16,891,700	1,510,553	11,370,084	9%	67%	12,880,637	4,011,063	24%
Free State	12,982,600	845,084	11,857,160	7%	91%	12,702,244	280,356	2%
Gauteng	1,817,800	304,137	1,181,518	17%	65%	1,485,655	332,145	18%
KwaZulu-Natal	9,332,800	4,695,245	4,297,235	50%	46%	8,992,480	340,320	4%
Limpopo	12,575,600	2,551,790	8,844,083	20%	70%	11,395,872	1,179,728	9%
Mpumalanga	7,649,500	1,875,146	4,805,344	25%	63%	6,680,490	969,010	13%
North West	10,488,100	2,409,778	7,481,942	23%	71%	9,891,720	596,380	6%
Northern Cape	37,288,800	1,829,347	35,210,998	5%	94%	37,040,345	248,455	1%
Western Cape	12,946,300	1,040,801	11,502,427	8%	89%	12,543,228	403,072	3%
<b>Totals</b>	<b>121,973,200</b>	<b>17,061,882</b>	<b>96,550,791</b>	<b>14%</b>	<b>79%</b>	<b>113,612,673</b>	<b>8,360,527</b>	<b>7%</b>

Source: DRDLR, Land Audit Report 2017

Source:[n.d]<[https://www.gov.za/sites/default/files/gcis\\_document/201802/landauditreport13feb2018.pdf](https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf).

This graph illustrates the private and land audit survey that was conducted by the Department of Rural Development and Land Reform shows that the private sector owns a huge piece of land in the country, while the state owns a small portion. The Economic Freedom Fighters raise a motion for the nationalization of land in parliament. Hoffman (2019) reported that the Commander in Chief of the EFF is emphasizing that *“Every land in South Africa should be expropriated without compensation and it will be under the state. The state should be the custodian of the land”*. This statement means that land should be owned by the state so that it will be shared equally among all citizens of South Africa. However, the President of South Africa, Mr Cyril Ramaphosa, said no to the nationalization of land, and he said that government would embark on the process of restoring land to the citizens who were dispossessed from it during the period of the apartheid (Gerber,2018).

According to Mheta (2016), one of the main reasons for the slow progress on land redistribution is because lack of willing sellers and high land prices. The White Paper (Department of Land Affairs 1997) commits the government to approach the issue of land redistribution using the principle of willing-seller willing-buyer. The policy also states that government will not be an active buyer per se but will make grants and services available to assist the disadvantaged and marginalized to buy land from whom so ever is selling.

However, the principle of willing buyer willing seller managed to redistribute four per cent (4%) of agricultural land since 1994, while more than eighty (80%) of agricultural land remains in the hands of fewer than fifty thousand (50 000) white farmers and agribusinesses. *“The willing-seller, willing-buyer approach to land acquisition has constrained the pace and efficacy of land reform. It is clear from our experience that the market is unable to effectively alter the patterns of land ownership in favour of an equitable and efficient distribution of land”* (ANC, 2007). The willing buyer and willing seller principle failed the process of land redistribution in South Africa.

Land redistribution in South Africa has not been effectively implemented as intended. This is attested by Mheta (2016) where he states that the post-apartheid democratic government in the year 2007 has managed to redistribute about 4.2 million (4.7%) hectares of land, particularly for commercial agriculture programmes. However, the objectives of the land redistribution policies and programmes were to redistribute 30% of land by the year 2014

(Mheta,2016). Moreover, the white's community still owns more than 82 million hectares of commercial agricultural land in South Africa. However, the government is hoping to transfer more than 24.6 million hectares of land from the hands of the white (Mheta,2016). This will be done by the government to ensure that all citizens have equal access to land in the country.

Pienaar (2015) mentioned that the aim of land reform is to eradicate poverty and address the inequalities and injustices of the past. He further states that land reform is also high on the agenda of Millennium Development Goals and also on the South African government National Development Plan 2030. According to the Rural Development and Land Reform department Budget Vote 39 for 2019, which state that during the 2019/2020 financial year, the department will spend about R33 billion rand over the medium-term budget on programmes such as restoring land rights to the historically marginalized and disadvantaged citizens, promoting and accelerating land reform through land development and redistribution, land tenure transformation, creating more job opportunities through programmes of skills development and increasing of operational capacity (DRDLR,2019a). The department also launched another initiative of land reform programme, which is called the One Hectare initiative. The aim of the programme is to promote agrarian land transformation and equal access to all the historically disadvantaged citizens, particularly those who were dispossessed by the then colonial apartheid government in their land. The Minister stated that the department would spend more than R3.5 billion on the programme over the Medium-Term Expenditure Framework Period (MTEF) (DRLR, 2019 a).

Sebola (2014) states that the transfer of land is gradually picking up the pace again, with just over three hundred thousand hectares (300 000 ha) of land delivered in 2010's financial year. Between the period of 1994 and January 2013, over four and half thousand (4 813) farms with a total area of four-point twelve million hectars (4 120 000) of land was restored to the black community through various programmes of land redistribution in South Africa.

However, the former Minister of Rural Development and Land Reform, Gugile Nkwinti, states; "it was no longer practical to meet the ambitious target, as the government could not raise the R75 billion needed to acquire 82 million hectares that still need to be reclaimed and redistributed" (Molefe, 2010).

The Government set a target in 1994 for the land reform program to transfer thirty-per cent (30%) of white-owned agricultural land within a five-year period (ANC, 1994 & Lahiff,

2007). However, the target was not met. As such, the target period was extended to twenty years (2014). The government has currently further extended the target to 2025.

**Table 1: Individual land owners by gender in hectares**

Province	Male		Female		Male-Female		Co-owners		Other		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	
EC	3 704 812	80	439 032	9	229 159	5	60 218	1	178 308	4	4 611 528
FS	3 518 907	70	854 107	17	414 059	8	44 566	1	177 626	3	5 009 264
GP	235 362	51	112 110	24	98 483	21	6 060	1	10 654	2	462 669
KZN	934 891	58	134 896	8	130 532	8	86 998	5	330 76	20	1 617 493
LP	1 022 742	58	275 057	16	315 703	18	46 164	3	90 310	5	1 749 977
MP	955 454	66	218 791	15	190 483	13	27 293	2	49 131	3	1 441 152
NW	2 047 590	62	487 229	15	523 392	16	120 084	4	132 914	4	3 311 210
NC	11 000 772	73	1 882 645	12	1 693 539	11	166 088	1	267 958	2	15 011 002
WC	2 782 161	72	467 145	12	374 965	10	97 772	2	141 951	4	3 863 994
<b>Total</b>	<b>26 202 689</b>	<b>71</b>	<b>4 871 013</b>	<b>13</b>	<b>3 970 315</b>	<b>11</b>	<b>655 242</b>	<b>2</b>	<b>1 379 029</b>	<b>3</b>	<b>37 078 289</b>

**Source: DRDLR, Land Audit Report 2017**

Source[n.d]<[https://www.gov.za/sites/default/files/gcis\\_document/201802/landauditreport13feb2018.pdf](https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf).

The above table reveals that males and females own a total of 37 078 289 ha farms and agricultural holdings land in the country: with 26 202 689 ha or 71 owned by males; followed by females at 4 871 013 ha or 13%; male-female at 3 970 315 ha or 11%; co-owners at 655 242 ha or 2%; and other at 1 379 029 ha or 3%. NC has the largest farmland of 15 011 002 ha or 40% owned by males; followed by FS at 5 009 264 ha or 13%; EC at 4 611 528 ha or 12%; WC at 3 863 994 ha or 10%; NW at 3 311 210 ha or 9%; LP at 1 749 977 ha or 5%; KZN at 1 617 493 ha or 4%; MP at 1 441 152 ha or 4%; GP at 442 669 ha or 1%. The below table further reveal that males own the largest size of farms and agricultural holdings at 11 000 772 ha of 73% is in NC; followed by 3 704 812 ha or 80% in EC; FS at 3 518 907 ha or 70%; WC at 2 782 161 ha or 72%; NW at 2 047 590 ha or 62%; LP 1 022 724 ha or 58%; MP at 955 454 ha or 66%; KZN at 934 891 ha or 58%; and GP at 235 362 ha or 51%. Females own the largest farmland also in NC at 1 882 645 ha or 12%; followed by FS at 854 107 ha or 17%; NW at 487 229 ha or 15%, and EC at 439 032 ha or 9%. The rest of the provinces are below 9%. The graph shows that males dominate land ownership with a large portion of hectares in all provinces in South Africa.

**Table 2: Number of Individual landowners by gender**

Province	Male		Female		Other		Total
	No.	%	No.	%	No.	%	
EC	6 145	53	3 016	26	2 519	22	11 680
FS	9 182	60	5 119	34	876	6	15 177
GP	26 690	56	19 139	40	1 762	4	47 591
KZN	12 674	42	8 780	29	8 538	28	29 992
LP	8 135	51	5 283	33	2 495	16	15 913
MP	7 139	55	4 480	34	1 401	11	13 020
NW	11 154	46	6 739	28	6 228	26	24 121
NC	4 536	63	2 318	32	333	5	7 187
WC	9 395	56	5 775	34	1 681	10	16 851
<b>Total</b>	<b>95 050</b>	<b>52</b>	<b>60 649</b>	<b>34</b>	<b>25 833</b>	<b>14</b>	<b>181 532</b>

**Source: DRDLR, Land Audit Report 2017**

Source[n.d]<[https://www.gov.za/sites/default/files/gcis\\_document/201802/landauditreport13feb2018.pdf](https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf).

The table above shows that a total of 181 532 males and females own farms and agricultural holdings: with the number of males being 95 050 or 52%, and others numbering 25 833 or 14%. Table 2 also shows that GP has the highest number of male and female farms and agricultural holdings at 47 591 or 26%, followed by KZN at 29 992 or 16% and NW at 24 121 or 13%. The rest of the provinces have 10% or less male and female farmland and agricultural holdings.

Both tables 2 and 3 revealed that male individuals own above the national average farmland and agricultural holding except in GP, where they own lower than the 10-ha provincial average. Their highest average size is 2 425 ha in NC, followed by EC at 603 ha, FS at 382 ha, WC at 296 per, NW at 184 ha, MP at 134 ha, LP at 126 ha, and KZN their lowest at 74 ha. Female individual landowners highest average holding is 818 ha in NC, followed by FS at 167 ha, 146 ha in EC, 81 ha in WC, 72 ha in NW, 52 ha in LP, 49 ha in MP, 15 ha in KZN, and their lowest at 6 ha in GP. The male average farm and agricultural holding is 276 ha in contrast to the female of 80 ha. The provincial averages for both males and females are 395 ha in EC, 330 ha in FS, 10 ha in GP, 54 ha in KZN, 110 ha in LP, 111 ha in LP, 137 ha in MP, 137 ha in NW, 2 087 ha in NC, and 229 ha in WC. The figures on the table show that females are not equally represented on land. It revealed that land ownership is dominated by males in the country. Moeng (2011:5) study on land reform policies to promote women's sustainable development in South Africa revealed that previous land policies and legislations

had neglected and isolated women on land reform and developmental programmes. The research depicts that women still remain excluded or not well presented on land reform matters.

Makhado (2012) further state that there are various challenges hindering the process of land redistribution in South Africa. The challenges includes among others; willing seller-willing buyer principle: it takes a long time to negotiate land price with the current landowners; Claim disputes: it is a long process to mediate and resolve claim disputes (e.g. unresolved disputes between Makgoba Traditional Council and the Trust in the Limpopo Province, South Africa); Capacity: there is lack of institutional capacity for community legal entities (e.g. Trust); beneficiary selection: it is a lengthy process and time consuming process to select the rightful beneficiaries for land redistribution; resettlement support: it requires enough resources and time to effectively facilitate post-resettlement support to new landowners; monitoring and evaluation: there is lack of reliable monitoring system and evaluation in government land redistribution programmes; policy: there are gaps in the current policies which compromise effective implementation of the land redistribution programme and different political views: there is lack of common consensus among political parties on land reform debate (Makhado, 2012). However, Rieker and Tahboula (2015:54) argue that the lack of progress on implementation of land redistribution programmes can be improved through strengthening policy networks. Government cannot achieve the goal of land redistribution on its own but should work with other stakeholders to ensure proper and effective implementation of the land redistribution policies and legislations.

The below table illustrates land audits for individual landowners by race in all provinces in South Africa.

**Table 3: Individuals landowners by race in hectares per province**

Province	White		African		Coloured		Indian		Co-ownership		Other		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	
EC	26 379	19	93 868	67	6 764	5	5 427	4	4 233	3	3 169	2	139 839
FS	7 543	28	15 388	58	1 760	7	892	3	366	1	586	2	26 535
GP	32 056	34	40 849	43	8 325	9	7 009	7	2 557	3	3 461	4	94 257
KZN	19 749	25	30 675	39	6 043	8	15 232	20	3 205	4	2 832	4	77 735
LP	5 680	28	11 688	58	1 378	7	981	5	207	1	319	2	20 253
MP	6 511	31	11 281	54	1 335	6	854	4	275	1	460	2	20 715
NW	7 140	40	7 922	45	1 238	7	720	4	239	1	429	2	17 688
NC	152 624	83	2 356	1	12 560	7	13 515	7	347	0	3 002	2	184 403
WC	99 825	71	5 008	4	15 119	11	11 280	8	2903	2	7 107	5	141 242
<b>Total</b>	<b>357 507</b>	<b>49</b>	<b>219 033</b>	<b>30</b>	<b>54 522</b>	<b>8</b>	<b>55 909</b>	<b>8</b>	<b>14 332</b>	<b>2</b>	<b>21 365</b>	<b>3</b>	<b>722 667</b>

**Source: DRDLR, Land Audit Report 2017**

Source[n.d]<[https://www.gov.za/sites/default/files/gcis\\_document/201802/landauditreport13feb2018.pdf](https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf).

Table 3 above illustrates that a total of 722 667 ha even land that is owned by all races in South Africa: 357 507 ha or 49% of which is owned by Whites; followed by Africans at 219 033 ha or 30%; Coloured and Indian at 54 522 and 55 909 ha or 8% respectively; co-ownership and other at 5%. NC has the largest erven land at 184 403 ha or 25% in the country; followed by WC at 141 242 ha or 19%; EC at 139 839 ha or 19%; GP at 94 257 ha or 13%; KZN at 77 735 ha or 11%; FS at 26 535 ha or 4%; MP at 20 715 ha or 3%; and the rest of provinces at 3% and less. Whites own the largest extent of land among racial groups at 152 624 ha or 83% in NC; Africans own the largest land among racial groups in EC at 93 868 ha or 67%; Coloureds in the WC own the largest size of erven land at 15 119 ha or 11%, but less extent than Whites; similarly, Indians own their highest racial group erven land in KZN at 15 232 ha or 20%, but less than Africans at 39% and Whites at 25% respectively. The above figures presented on the table clearly shows unequal ownership of land in South Africa.

#### **4.5. CONCLUSION**

This chapter aimed to discuss the historical perspective of land redistribution in South Africa with specific reference to land policies of the apartheid era. The chapter also further discussed land redistribution in post-apartheid South Africa with specific reference to the current state of land redistribution policy in South Africa.

## **CHAPTER 5: FINDINGS, INTERPRETATIONS AND ANALYSIS**

### **5.1. INTRODUCTION**

This Chapter will present, interpret and analyse the data collected from the parliamentary constitutional review committee reports, oral presentations, written submissions and public hearings that were made by the public regarding the review of section 25 of the Constitution on land redistribution in South Africa. This chapter will also analyse and interpret the data on the role of public participation in the land redistribution policy review, with specific reference to the expropriation of land without compensation, analyzing the views of the public on whether section 25 of the constitution should be reviewed or not, the mechanisms of public participation used by the parliament when reviewing section 25 of the constitution on land

redistribution and also the individuals or civil society organizations involved in reviewing section 25 of the Constitution which provides for the equal redistribution of land amongst all citizens in South Africa. The research findings will be analyzed and interpreted by using the research questions as broad themes and sub-themes.

## **5.2. Stakeholders involved in the land redistribution policy review**

According to Diamond (1999:221), civil society involves the public in a platform collectively engaging with government to express their ideas, preferences, needs, aspirations, interests to exchange information and ideas, to make demands on government, to achieve collective goals, to transform the state and to hold the public officials accountable.

There are various individuals and civil society organizations involved who play a crucial role in making sure that section 25 of the constitutional provisions on land redistribution are fulfilled. These individuals and civil society are all parties involved and also who play a part in making sure that land is being redistributed equally to all citizens in South Africa, regardless of their sex, race, gender and colour. According to Spies (2018), the parliament of South Africa received more than 700 000 written submissions that were made by the public on land redistribution policy in South Africa. Due to that, there are many organizations that made written submissions to parliament on whether section 25 of the Constitution should be reviewed or not. This study will identify the key organizations involved who made extensive input on the review of section 2 of the Constitution.

The individuals and civil society organizations involved in the review of section 25 of the Constitution on land redistribution according to the Parliamentary Committee on Review of Section 25 of the Constitution (2018) are:

### **5.2.1. Afri-business**

Afri business is an independent business community that was founded in 2011 with more than 12000 members countrywide. The mission of Afri business is to promote and create in the interest of its member's constitutional order, free market, prosperity, property rights, and a favourable business environment in South Africa.

### **5.2.2. Agri-SA**

Agri-SA is a federation of agricultural organizations that was established in 1904 as the Southern African Agricultural Union. The Agri-SA members include 9 provincial organizations, 25 commodity organizations and 32 corporate members. Agri SA represents a

diverse grouping of individual farmers regardless of gender, colour or creed. Agri SA is a non-profit and political organization.

### **5.2.3. Business Unity South Africa (BUSA)**

BUSA is a confederation of business organizations, including chambers of commerce and industry, professional associations, corporate associations, and unisectoral organizations. It represents a cross-section of business, large and small, on macro-economic and cross-cutting policies and issues that affect business in all three spheres of government and at the international level. BUSA's function is to ensure business plays a constructive role in economic growth, development and transformation and to ensure an environment in which business can thrive, expand and be competitive. As the principal representative of business in South Africa, BUSA conveys the views of its members in various national structures and bodies, both statutory and non-statutory.

### **5.2.4. Free Market Foundation (Rule of Law Project)**

The Free Market Foundation (FMF)<sup>1</sup> is an independent public benefit organization founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations, and sponsorships. FMF mandate and function is to promote economic freedom as the empirically best policy for bringing about economic growth, wealth creation, employment, poverty reduction, and greater human welfare. The FMF's Rule of Law Project is dedicated to promoting a climate of appreciation throughout South Africa, among the public and government, for the rule of law; continually improving the quality of South African law; identifying problematic provisions in existing and proposed laws, and, where feasible, advocating rectification.

### **5.2.5. The F W de Clerk Foundation**

The FW de Clerk Foundation supports and promotes the Constitution, the Bill of Rights and the rule of law through the activities of the Centre for Constitutional Rights. The Foundation promotes unity in diversity by working for cordial inter-community relations through the activities of the Centre for Unity in Diversity. It provides information on FW de clerk's presidency and the factors that led to South Africa's transition to a non-racial constitutional democracy.

### **5.2.6. Helen Suzman Foundation**

The Helen Suzman Foundation was founded in 1993 to honour the life of Helen Suzman, who was a public servant. Helen Suzman became an MP in 1953, going on to serve for a further 36 years. For 13 of those years, Helen was the sole Progressive MP in Parliament and for 6 years was the only female parliamentarian. She consistently challenged discriminatory legislation and the spate of security laws introduced by the apartheid regime government. The Helen Suzman Foundation promotes liberal Constitutional democracy and the rule of law. It is an organization that promotes good governance, transparency and accountability.

### **5.2.7. Phuhlisani Foundation**

Phuhlisani is a non-profit company with a long history of work in the land reform space. The organization generate solutions based on research, dialogue and reflexive practice to secure rural citizens' rights and build an organization to address poverty, landlessness and tenure insecurity. The foundation recognizes that the rural and urban land questions are closely connected and network with organizations operating within the urban sphere. Phuhlisani was commissioned to undertake research for the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (HLP) which published its report in December 2017.

### **5.2.8. Institute for Poverty, Land and Agrarian Studies (PLAAS)**

The Institute for Poverty, Land and Agrarian Studies (PLAAS) is a constituent unit of the School of Government at the University of the Western Cape, which was established in 1995. PLAAS engages in research, training, policy development and advocacy in relation to land and agrarian reform, rural governance and natural resource management. PLAAS aims for rigour in its scholarship, excellence in its training, and effectiveness in its policy support and advocacy. It strives to play a critical yet constructive role in processes of social, economic and political transformation.

### **5.2.9. Socio-economic Rights Institute**

The Socio-Economic Rights Institute of South Africa (SERI) is a non-profit company registered as a public interest law centre. They conduct research, advocacy and litigation to assist the communities and individuals who approach and seek to enforce their socio-economic rights.

#### **5.2.10. Support Public Broadcasting**

The SOS Coalition is a member-based public broadcasting network that campaigns for democratic media and broadcasting, as well as programming by the public broadcaster - in particular, the South African Broadcasting Corporation (SABC) to serve the public interest.

#### **5.2.11. Centre for Applied Legal Studies**

CALS is a human rights organization and registered law clinic based at the School of Law at the University of the Witwatersrand. CALS is committed to the protection of human rights through the empowerment of individuals and communities and the pursuit of systemic change.

#### **5.2.12. Equal Education Law Centre**

EE is a membership-based, democratic movement of learners, parents, teachers and community members, with the core objective of working and campaigning for quality and equality in education in South Africa. EE conducts a broad range of activities in order to advance this objective, including research and policy development, public campaigns and activism, and, where appropriate, litigation.

#### **5.2.13. Land and Accountability Research Centre (LARC)**

The Land and Accountability Research Centre (LARC) is based in the University of Cape Town's Faculty of Law. LARC forms part of a collaborative network, constituted as the Alliance for Rural Democracy, which provides strategic support to struggles for the recognition and protection of rights in the former homeland areas of South Africa. An explicit concern of LARC is power relations and the impact of national laws and policy in framing the balance of power within which rural women and men struggle for change at the local level.

#### **5.2.14. Centre for Development and Enterprise (CDE)**

The Centre for Development and Enterprise (CDE), independent policy analysis and advocacy organization, is South Africa's leading development think tank. Since its establishment in 1995, CDE has been gathering evidence, consulting widely, and generating innovative policy recommendations on issues critical to economic growth and democratic consolidation. CDE has a special focus on the role of business and markets in development.

#### **5.2.15. Agricultural Business Chamber**

Agbiz is a voluntary, dynamic and influential association of agribusinesses operating in South and southern Africa. Agbiz's function is to ensure that agribusiness plays a constructive role

in the country's economic growth, development and transformation and to create an environment in which agri-businesses of all sizes and in all sectors can thrive, expand and be competitive.

#### **5.2.16. Alliance for Rural Democracy (ARD)**

The Alliance for Rural Democracy (ARD) is a cross-section of civil society organizations sharing a common concern about the ongoing struggle to defend rural land rights and democracy against the onslaught of new laws and policies that favour the interests of traditional leaders and politically connected business investors at the expense of the land and political rights of poor South Africans living in the former Bantustans.

#### **5.2.17. Association for Rural Advancement (AFRA)**

The Association for Rural Advancement is a non-governmental organization (NGO) established in 1979 to assist the marginalized black people in resisting forced removals. Since then, the organization has evolved and is now working towards an inclusive, gender-equitable society where rights are valued, realized and protected, and is mainly focusing on farm dwellers.

#### **5.2.18. Azanian People Organization (AZAPO)**

The Azanian People's Organization (AZAPO) was the natural successor to all the above organizations and in the same vein, adopted further iterations through resolutions and constitutional precepts that sought to reinforce and crystallize its predecessor sister BCM formations on the land and agrarian struggle in our country.

#### **5.2.19. Women on Farms Project**

Women on Farms Project (WFP) is a women's rights organization focused on the advancement of the rights of women who live and/or work on farms. WFP is a registered South African non-governmental organization (NPO # 019-494-NPO). The project grew out of a 1992 Lawyers for Human Rights initiative aimed at meeting the specialized needs of women who live and work on farms (farm women).

#### **5.2.20. Land Access Movement**

The Land Access Movement of South Africa (LAMOSA) is an independent federation of rural Community Based Organizations (CBOs) advocating for land and agrarian rights and substantive democracy through facilitating Sustainable Development. It first saw the light of day as the Transvaal Land Restoration Committee (TRAC) in 1991, with its founding members drawn from dispossessed communities in the former Transvaal region.

### **5.3. Mechanisms of public participation in the land redistribution policy review**

The South African Democratic Constitution makes provisions for the involvement of the public in law-making, public-policy making, oversight and other processes of Parliament. The system of democracy in South Africa only provides for the public to elect their respective political representatives, but it allows all citizens to make a meaningful say and input with the aim to design policies that will directly respond to their needs and aspirations.

There are various mechanisms that are used by the parliament and government to involve the public in policy decision making processes. Amongst them are; public hearings, public meetings, oral presentations, written submissions, voting, and citizens surveys.

The parliament of South Africa used public hearings, written submissions and oral presentations as part of the mechanism to engage the public on review of section 25 of the Constitution on land redistribution. The mechanisms used to invite the input of the public and to make their voices heard on land redistribution policy review are discussed below:

#### **5.3.1. Public hearings**

There are various studies that exist pertaining to the role that is played by the public in policy-making processes. However, this study uses Arnstein Ladder of citizen participation theory to critically analyze the mechanisms that are used by the South African parliament to engage the public in policy decision making processes.

According to Smith (2003:41), public hearings are open spaces where the general citizens are invited by the government or parliament to participate in policymaking processes, with the aim to solve social problems that affect them. The parliament of South Africa used public hearings to invite the public to make meaningful input on the review of section 25 of the constitution on land redistribution in South Africa. Arnstein (1969) Manipulation and Therapy rungs ladder of citizen participation state that the objective of these two rungs is not to allow the public to actively participate in the processes of policy making or program planning, but the intention is to allow those in power (governmental and legislative bodies) to “educate” and “cure” the participants. The parliament of South Africa should provide programmes to educate the public on the processes of policymaking in the legislature.

Moreover, through manipulation and therapy, “the public is placed on a rubber stamp advisory committee s or advisory boards for the express of “educating” them or engineering their support” (Arnstein,1969). Arnstein (1969:3) argue that therapy rung of the ladder, and those in power assumes that the public is not capable of making decisions on policy issues

that directly affect them politically, socially and economically. However, according to the Chairperson of the Parliamentary Committee, Mr Vincent Smith, state that the role of public hearings in the process of reviewing section 25 of the Constitution on land redistribution is that:

*“I want the public to answer the question as to whether the Constitution, section 25, is an impediment to the land reform programme. If it is indeed an impediment, what changes do they desire”.* Babu (2018:244) argues that the input, concerns, views and desires of the public gathered through public meetings and hearings processes are rarely considered by those in power. This argument attests that those in power usually come to the public already have decided on a particular policy issue. They come to consult the public just to fulfil the procedures and comply with parliamentary policies and legislations that allow the public to participate actively in the policymaking. However, the Chairperson of the Joint Constitutional Review Committee indicated that:

*“We have to approach the hearings clearly and open-minded as Parliament does not have a view one way or the other - it is as far from the truth as can be to say that Parliament has already decided and we must desist from doing so because there is no pre-cooked decision in Parliament”.* The parliament of South Africa must put the views and input of the citizens that were gathered through public hearings oral and written submissions based on a review of the Constitution section 25 at the centre of its policy decision-making processes.

He further stated that in his statement:

*“We want all South Africans to (1) feel free to come and give their view and (2) for South Africans to be tolerated enough to allow those who have different views to air their views. I would hate to see a situation where people are shouted down or physically harassed because they might have a different view to yours or mine.”*

Public hearings play an important role in engaging the government with the public on issues of socio-economic development. de Castro (2013) indicates that public hearings still remain a crucial mechanism to directly engage with the citizens. Scholarly research revealed that public hearings are a mechanism of citizen’s participation that is effective in the public policy making cycle. As noted by Kihl (1985), public hearings are responsive to the needs and aspirations of the citizens rather than frustrating them. This author states that public hearings enhance and strengthen individual leadership capacity, personal development and growth, educate the general citizens on how government functions, as well as understand the full

process of policy formulation. Moreover, Fiorino (1990) identify principles to assess the involvement of the citizens and public hearings, which are: (i) direct participation of amateurs in the whole cycle of policy-decision making, (ii) the participation of the general public in a collective policy decision-making processes,(iii) the length of time available for the government directly engage with those affected by the policy issues, (iv) the opportunity of the public to participate with those in power, administrative support staff as well as an expert in policy making. i.e. technical experts. Furthermore, other scholars such as Topal (2009) find that public hearings have been employed to “legitimate practices and enact institutional power”.

The second stage of the third and fourth rung of the ladder of citizen participation, informing and consultation. Arnstein (1969:219) states that at the informing rung of the ladder of citizen participation, information directly flows from the public office-bearers to the general public with “no channel provided for feedback and no power for negotiation”. The most frequent tools used for “participation” and communication during the process of “informing” include news, media, pamphlets, posters, responses to inquiry and meetings, which discourage questioning and provide superficial and irrelevant information (Arnstein,1969:219). This scholar argues that citizens lack the power to ensure that their views, opinions, concerns and inputs will be noted by government officials and legislative bodies. Moreover, when public participation is restricted to these levels, there is no follow-through, no “power”, there is no plan in place of providing an effective solution to a particular policy problem (Arnstein, 1969:219).

Parliamentary Joint Constitutional Review Committee Report (2018) that public hearings were conducted in all provinces targeting certain districts and municipalities/towns in those districts. Public hearings in provinces were held from 26 June to 4 August 2018. Public hearings were conducted for the period of six weeks by the Parliamentary Joint Constitutional Review Committee. The intention of the committee was to listen and engage the members of the public regarding whether it is necessary to amend section 25 of the Constitution and also mechanisms to redistribute and expropriate land in the interest of the public.

The public hearings for the review of section 25 of the Constitution on land redistribution programme were scheduled for provinces/districts and their locals as follows:

**Table 1: Distribution of Provinces and Towns for public hearings**

Week	Delegation A		Delegation B	
	Province	Town	Province	Town
26 - 30 June 2018	Limpopo	Marble Hall, Mokopane Tzaneen Thohoyandou	Northern Cape	Springbok, Upington, Kuruman Kimberley
01 - 04 July 2018	Mpumalanga	Mbombela Ermelo Middleburg	Free State	Botshabelo, Welkom Phuthaditjhaba
17 - 19 July 2018	North-West	Taung, Mahikeng Rustenburg	KwaZulu-Natal	Vryheid Jozini, Pietermaritzburg Kokstad
26 - 28 July 2018	Gauteng	Westonaria Sedibeng Pretoria West	Eastern Cape	Umtata, Queenstown East London Jansenville
01 - 04 August 2018	Western Cape	Oudtshoorn, Beaufort West Cape Town	Western Cape	Citrusdal, Swellendam Cape Town

**Source:** Joint Section 25 Constitutional Review Committee Report (2018)

Source [n.d]<<https://www.parliament.gov.za/project-event-details/30>.

Consultation, which is the fourth rung on the ladder, provides for a two-way flow of information through meetings, hearings and surveys. Arnstein (1969:219) categorizes consultation rung in the following: “What citizens achieve in all this activity is that they have “participated in participation”. And what the powerholders achieve is the evidence that they have gone through the required motions of involving “those people”. Watt et al. (2000:121) state that South African government is very interested in promoting “consultation”. However, Arnstein (1969) argues that consultation is nothing more than a degree of “tokenism” and maintains that partnership would be a more effective route towards public empowerment.

On the other hand, Cogan (1986:287) state that public participation programs can increase cost and the amount of time a project or program takes. There is a certain level of risks

associated with the programs of public participation in policy making processes. However, Cogan (1986) is of the opinion that public participation programs can make the policymaking process and policy makers more effective by:

- Reducing isolation of the planner or policymaker from the public
- Generating the spirit of cooperation and trust
- Providing opportunities to distribute information
- Identifying additional dimensions of inquiry and research
- Assisting in identifying alternative solutions to public policy problems
- Providing legitimacy to the planning effort and political credibility of the agency; and
- Increasing public support

Friedman (1993:1) perceives that claims to have “consulted” or “involved” the community may be questionable in that there may be an implicit assumption that “the public” is a homogenous group of like-minded people. He argues that the public is made up of a range of individuals with different interests and values. A claim to have been involved or consulted, or negotiated with the public or community would imply that all the different interests and values are represented in the planning or policymaking process (Friedman, 1993:1). The Chairperson of the Parliamentary Committee mentions that:

*“It does not matter how many say “yes” or “no”, it not about numbers, it about the strength and quality of the argument made by the citizens”* on whether section 25 of the Constitution on Land redistribution should be reviewed or not to allow expropriation of land without compensation in the interests of the public. Moreover, Cogan et al. (1986:287) indicate that participation of the public in policy making processes offers a variety of rewards to citizens. The rewards can be their involvement in the policy making process, and also, it gives the citizens the opportunity to make a meaningful and effective input to public-policymaking related issues (Cogan et al., 1986:287). Public policies are designed to solve the social problems that affect the citizens; therefore, those in power should make sure that they give citizens their constitutional democratic right to participate in policy making. Consulting the public in policy-making processes has its goals and objectives, as identified by Priscoli and Homenuckm (1986:70), which are:

- To build credibility with those individuals who are affected by the social or policy issue.
- To identify the values and concerns of the citizens.

- To develop an agreement between the parties that are affected by the public policy issue.
- To create the greatest number of “unsurprised” apathetic. This means that not all citizens want to be involved or interested engage in issues of public policy making. However, those members of the public should not be surprised when decisions have been taken on a particular policy issue; rather, they should be informed that a decision has been made on a social or policy issue.
- To produce better policy decisions. Consulting the public on issues pertaining to public policy can produce better “technical” decisions than a strictly technically oriented decision process.
- To strengthen democratic practices. Consulting the public in policy decision-making enhance participation and good governance. If the public is not consulted or informed of the decision made on policies, it can raise an issue to the citizens why they were not first consulted or informed when making decisions on issues of public policy because policies are made to address their socio-economic issues. For example, the issue of land redistribution is currently in a hot debate in parliament therefore the citizens must be consulted first before they take any decision regarding the issue.

The final level of tokenism is placation, where participants begin to gain influence through boards or committee meetings. However, they still are outnumbered or overruled, particularly when their opinions or views are unfavourable from the perspective of policy decision-makers (Arnstein, 1969:222).

The third stage of Arnstein’s ladder, i.e. citizens power, begins with the sixth rung, partnership. At this rung, “[Citizens and power holders] agree to share planning and decision-making responsibilities through such structures as joint policy boards, planning committees and mechanism for resolving impasses” (Arnstein,1969:222). Arnstein discusses some characteristics that effectively facilitate partnership, such as organized citizen’s leaders and groups within the community and financial resources for technicians. Government and community partnerships play a critical role in the realization of an effective and efficient policy making processes that will respond to the needs of the citizens. Taylor (2000) mentions that the reasons to involve the public in policy decision-making includes the realization that:

- Shared ownership of ideas and programs between the government and the citizens makes it more likely that they will be sustained.

- Implicit knowledge of the public is an asset towards developing solutions to public policy problems.
- Residents are in a critical position to monitor service delivery programs outcomes and can act as an important check on poorly defined and targeted services.
- Public involvement in public policymaking develops the skills and social capital in communities that are needed to address the exclusions of the past.

Taylor (2003) states that partnerships in policymaking bring diverse expectations, goals, cultures, views, knowledge, education, skills, powers and resources to the process. Partnerships in public policymaking create doors of opportunities for the public. However, the process can also exclude the public further. Communities involvement in policymaking benefits stakeholders, the public and government as identified by Cogan and Sharpe (1986:28) which are:

- Information, knowledge and opinions on public policy problems
- Public support for policy decision making
- Avoidance of protracted conflicts and costly delays
- A reservoir of goodwill which can carry over to future decisions; and
- Spirit of collaboration or partnership between government, agencies, stakeholders and the public at large.

However, some public institutions and agencies choose to exclude or minimize the participation of the public in policy planning and decision-making process, claiming that public participation is time-consuming and very expensive (Cogan and Sharpe, 1986:284). Moreover, to support this argument, the Parliamentary Joint Constitutional Review Committee received written submission in two ways, viz., emails and hard copies delivered to Parliament by the respondents. Emails and hard copies were sent and/or delivered to the committee secretary as directed by the advertisement. This shows that written submissions do not cost them much than public hearings where they have to meet with the public in all provinces, districts and locals around the country, which could cost parliament a large amount of money. Furthermore, certain respondents brought memory sticks with information brought in hard copies. The process of written submissions minimizes time and cost. However, the process can exclude other individuals who may like their input to be included, or their voices heard in policymaking. For example, rural citizens were also affected by dispossession from their land, who may also wish to make valuable input on policy issues related to land redistribution. Since other citizens from the rural areas are illiterate and do not

know what a written submission is, therefore parliament of South Africa should conduct programs to educate the rural communities on how to make a submission on a public policy issue. On the other hand, Cogan et al. (1986) argue that in certain issues effective public participation program may actually save money and time by ensuring that the proposed solution to the policy issue is acceptable to the public and stakeholders interested.

There are various techniques to effective and successful involvement of the communities in policymaking programs, as outlined by Cogan et al. (1986). The techniques are described as follows:

- **Publicity-** Publicity techniques are designed to convince and facilitate the support of the public, relating to citizens that are not active on public participation programs.
- **Public Education-** Public education programs provide the public with completed information so that they may draw their own conclusion on a particular policy issue.
- **Public input-** The input of the citizens in policy decision making incorporates opinions, ideas, views, concerns, voices and aspirations from citizens- the views of the public are most effective when combined with feedback mechanisms that inform the members of the public the extent to which their input and voices has influenced public decision-making processes.
- **Public interaction-** Public interaction techniques facilitate the information, knowledge, skills, and ideas between the public, program planners, and policy decision-makers. When these techniques are effectively and efficiently used, it opens an opportunity to the participants to make a meaningful input on related public issues, to express their opinions and views responds to the ideas raised by others and works towards an agreed proposed solution to a public policy problem.
- **Public partnership-** Public partnerships offer the public an opportunity to play a critical role in designing and shaping the decisions into policy problems.

Moreover, Cogan further states that understanding a variety of public participation exists, planners must develop public participation programs that meet the specific goals, objectives, and circumstances of each individual project (Cogan et al.,1986). Cogan outlines that:

*“A successful citizen participation program must be integral to the planning process and focused on its unique needs, designed to function with available resources of time, personnel and money; and responsive to the participants”* (Cogan et al.,1986:298).

There are various elements to effective public participation. Cogan et al. (1986:298) state that for public participation programs to be effective, they must:

- Meet legal requirements
- Have clear goals, plans and objectives
- Demand political support
- Be an integral part of the decision-making structure
- Receive sufficient funding, staff and time
- Identify concerned or affected communities
- define clear roles, functions and responsibilities for public participants

Moreover, Priscoli and Homenuckm (1986:70) further state that involving interested citizens in all phases of the policy process leads to better decision-making.

Delegated Power and Citizen Control are the last two rungs on the ladder of citizen participation which emphasizes on citizens to obtain the majority of public policy decision making powers or full managerial power. Arnstein (1969:216) argue that “participation without the redistribution of power is an empty and frustrating process for the powerless”. Delegated power exists when citizens can assure accountability of a program by achieving dominant decision-making authority over the plan, policy or program (Arnstein, 1969:222).

Cooke and Kothari (2001) argue that citizens are also using confrontational approaches such as service delivery protests as platforms of participation in the policy decision-making process. Citizens use this invented space of “service delivery protests” to present their needs and concerns to those in power with the aim that they will quickly respond to their desires.

### **5.3.2. Written submissions**

The written submissions are used by the legislatures to invite the public to make written input on policymaking issues such as land redistribution. A written submission is the presentation of views, opinions and concerns of the public on the particular policy issue, legislation or bill that will directly affect their socio-economic well-being (Parliamentary Joint Constitutional Review Committee Report, 2018).

The Joint Constitutional Review Committee in April 2018 put an advertisement in various national and local media channels such as newspapers calling for members of the public to make written submissions on the necessity of and mechanism for expropriating land in the interest of the public without compensation. Members of the public were given until the end of May 2018 to provide the Committee with their views.

A total of 630 609 submissions were received from the public call for written submissions. However, only 449 522 were valid, and analysis could be performed based on the contents of the submissions. The inquiries, unrelated, blank and duplicate submissions were excluded from the analysis, and that brought the numbers down from 630 609 to 449 522 valid submissions, thus variance of 181 087 submissions.

**Table 1:** Summary of Written Submissions on Review of Section 25 on Land redistribution in South Africa

Total of Written Submissions	Yes, change the Constitution	No, don't change the Constitution	Undecided
449 522	153 849 (34%)	291 257 (65%)	4 416 (1%)

**Source:** Joint Section 25 Constitutional Review Committee Report (2018)

Source [n.d]< <https://www.parliament.gov.za/project-event-details/30>.

The above table indicates that 65% of valid written submissions were opposed to changing section 25 of the Constitution, whilst 34% were in favour of the amendment of the constitution. A further 1% was undecided on whether section 25 of the Constitution should be reviewed or not. The Constitution should not be changed or reviewed because it already provides for land redistribution and expropriation without compensation.

### 5.3.3. Oral submissions

Oral submissions give individuals/citizens a chance to reinforce what they have said in their written submission and allow the parliamentary committee to clarify points raised in the submission. If the committee has decided to hear your submission, the Committee Secretary will contact you to make arrangements to hear public oral submission.

Oral submissions can also be made at Public Hearings held by Parliamentary Committees:

- Submissions are recorded at the Public Hearing and transcribed.
- Parliamentary Committees looks at the evidence or opinions shared at the Hearing and discuss the contents of the submission
- If the view is supported by many people and if it has merit, the idea or concern stands a good chance of being included in the work of the relevant Committee/s.
- The Committee/s make the final decision about the merit of an issue.

Public call for public submissions, members of the public indicate whether they would like to make oral submissions to the committee.

#### **5.4. The views of the public on the current land redistribution policy**

South Africans have different views regarding the review of section 25 of the Constitution on land redistribution. The Joint Parliamentary Committee on Review of Section 25 of the Constitution on Land redistribution received inputs from individuals, representatives of political parties, community leaders, traditional leaders, property owners, including land reform Communal Property Associations (CPAs) and Trusts, Non-Governmental Organizations (NGOs), Community-Based Organizations (CBOs), organized agriculture, lobby groups, trade union movements, researchers, traditional healers' associations, faith-based organizations and other members of civil society in general (Parliamentary Constitutional Review Committee Report, 2018).

This section of the report presents the information, and analysis thereof received during the public call for written submissions, public hearings and oral presentations. Various themes emerged from the analysis of the information. Most respondents limited themselves to a "yes" or "no" to the amendment of s25 of the Constitution. The analysis also presented the committee with the number (and percentages) of those who were in support or against the amendment to s25 of the Constitution and those who were undecided about their views on the possible change to s25 of the constitution.

##### **5.4.1. Arguments for amendment of section 25 of the Constitution on land redistribution in South Africa.**

Upon further analysis of the 449 522 submissions, 153 849 members of the public responded in favour of the change of the Constitution to expropriate land without compensation. There is a perception amongst those who responded 'yes' to changing the constitution that many people are without housing as the land prices are high and in private ownership, thus inhibiting them from having access to land for housing and from producing and/or grow food. Many respondents who were in support of amending section 25 also believed that land was taken from blacks unfairly through the then apartheid government's manipulation of laws to create an unfair society that disadvantaged the black community. They emphasized the need for a process that would redress and rectify the injustices of the past.

There were significant recommendations that members of the public attached to their 'yes' responses. According to the views made by the member of the public on amendment of

section 25 of the Constitution on land expropriation without compensation, the member stated that:

*“Agricultural land that was actively used for food production and contributed to job creation and the economy should be preserved and not expropriated. Government should allocate unused land for farming and invest in agricultural training institutions for skills development in order to empower ‘new’ farmers to promote success”.*

This member believed that the Constitution should be amended, but expropriation should be without compensation. It was questioned whether land owned by the government would be expropriated without compensation too? The members of the public also mentioned that:

*“The current Constitution is not allowing any progress regarding the land restitution and redistribution in order to minimize the gap between the rich and the poor in South Africa”.*

#### **5.4.2. Public views who said “yes” to review of section 25 of the Constitution on land expropriation without compensation in South Africa**

There are South African citizens who said “yes” to the amendment of section 25 of the Constitution. Some of their views regarding the review of the constitution are captured as follows:

Another view that was made by a citizen in the KwaZulu-Natal state that section 25 of the Constitution should be amended because:

*“Well, it's about time we get back what belongs to the rightful owners. I may not have any land to my name, but I believe we blacks have a huge potential to change our current situation, and with more knowledge, they can do a lot of great things. Don't only amend but hire people who have agricultural knowledge to educate our people so they can have ideas of what to do with the land and also professionals dealing with the construction as the land is not only for farming but property development as well. So, amend and educate”.*

This member of the public is of the view that the state should provide programmes where they will educate the public on how to manage the land, especially for agriculture, commercial farming, food security, farming. Moreover, the state should provide the rightful owners with resources to manage land effectively and efficiently for economic growth and development. FARM Africa (2003) states that the South African Land Policy White Paper, 1997 objective is to redistribute land to landless people, tenants, farmworkers, labour tenure, and emerging farmers for residential and productive uses to improve their socio-

economic well-being. However, the implementation of the policy shows slow progress to date.

Another member of the public who also made a submission to the parliamentary committee on review of section 25 of the constitution stated that:

*“Constitutional amendment is so fundamentally important to be done, in order to create an environment of equity with equality, the current section (25) of the Constitution regards an impact of the past injustices against black people, it claims equality in entitlement to property which hasn't yet been revert back to their original rightful owners, Black people had nothing in 1994, all of their belongings were in the hands of whites, our new government had also failed to appreciate the nature of their decision, hence to claim equality out of society full of unjust impacts. Therefore, I hereby fully reinforce the amendment of Section 25, which entrenches the fundamental right to property/Land. I reinforce an advocacy of Land expropriation without compensation. Our government has attempted sufficiently to cooperate with farm owners to give back Land for purposes of conducting equitable redistribution of Land, Land seller Land buyers process has failed, farmers kept on demanding high amount of money as their worth of their farms which showed up that they were not prepared to cooperate with government. I further regard this process as a matter of public interest & as our constitution explicitly expresses that if any issue encountered is of public interest the state enjoys the capacity to expropriate that particular land to benefit the public at large. The state enjoys full discretion to decide about amendment in our constitution, therefore I full support this process”.*

To support the above view made by the member of the public, the President of South Africa, Mr Cyril Ramaphosa, during the 2019 State of the Nation Address (SONA) debate in Parliament state that land should be distributed to those who need it and those who work it. The President stated that *“Our land reform agenda also includes recognizing individual, family and community rights to land in accordance with lived experiences”*. The President further stated that for the South African government to effectively address society social problems, it needs first to address the issue of redistribution of land (Gerber,2019). The response made by the President in parliament on land redistribution depicts that the government has committed itself to address the issue of redistribution of land in the country.

#### **5.4.3. Public views who said “No” to review of section 25 of the Constitution on land expropriation without compensation in South Africa.**

A white farmer from North West who is opposing the review of section 25 of the Constitution on land redistribution pointed out that:

*“I speak as a white farmer. I wish that we all had this privileged in the past. The farms which we work to produce food for the nation, we had to purchase. In fact, many of our farms we paid for 20 years to the banks before we owned it. There must be no confusion with vacant land which is used for grazing for cattle. The government should rather look at state-owned land or land which is owned by tribal leaders and certain kings, which is the majority of black-owned property. White-owned farmland does not even exceed 9%. The rest is owned by black owners. If these lands can be changed into agricultural farming for black people, it will be a good thing.*

*You do not become a farmer. You are actually born a farmer. Nevertheless, you can study with the modern technology that has been developed by white farmers where black people can obtain this knowledge. The government should support black students with a farming college or Technikon or universities. The white farmers can help them with the practical training. The black students who obtain their diplomas must be given these farms with the support of the government. You will now have a successful black farmer. If the government takes white farms, they must be compensated. The secret is to keep the farmer on the farm to produce food.*

*Many farmers have got bonds on their farms. Who will be paying the bonds if the land gets taken without compensation?*

*This type of claim must not be used as a weapon so the government can get more votes. It will boomerang in the long run”.*

The government of South Africa should develop strategies that will encourage the public especially young black people, to pursue careers in agriculture and farming. Thwala (2010:4) argue that the government introduced Land Redistribution and Agricultural Development (IPLRAD) in 1999 with the intention to transfer 30% of medium and high-quality agricultural land to historically marginalized and disadvantaged black South Africans. The Program involved the following:

- Redistribution for farming to all black citizens regardless of income and not for settlement;
- Minimum own contribution of R5000, which could be king in the form of labour for a minimum grant of R20000 or a maximum grant of R100 000, which requires R400 000 own contribution.
- The role of the National Development Agency on support, including compulsory training and project environmental assessments and
- Disposing of state agricultural land, some 669 000 hectares.

However, there is still more that needs to be done by the program to train and educate the public in the agriculture and farming sectors. Moreover, since the farming and agriculture sectors are dominated by the white minority in South Africa, the government should encourage black people to join these sectors.

#### **5.4.5. Views made by other civil society organizations on review of Section 25 of the Constitution on land reform**

A Non-Governmental Organization called Afesis-Corplan, which promotes good governance and democracy that is situated in the Eastern Cape Province, made a written submission on amendment of section 25 of the Constitution on land redistribution where it stated that:

*“Constitution does not need to be revised at this stage to (1) expropriate land without compensation, and (2) create an appropriate tenure regime. The state should however (1) test the constitutional provisions to determine under what circumstances it just and equitable to provide zero or less than market value compensation: and (2) undertake research and investigation into the advantages and disadvantages of various tenure options in different circumstances, to inform appropriate tenure regimes”.*

After 25 years of Democracy in South Africa. However, Afesis-Corplan believes that government is not living up to its constitutional obligations and provisions to (A-as per section 25.5 of the Constitution) take sufficient *“reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access on land on an equitable basis”*, or (B-as per section 25.6) create a situation, to the extent provided by an Act of Parliament, where:

*“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled. either to tenure which is legally secure or to comparable redress.”*

The Institute for Poverty, Land and Agrarian Studies (PLAAS) made a submission to parliament, which states that land reform in South Africa needs a fundamental rethink. The organization proposed strategic questions and a range of possible policy options in order to situate the expropriation of land without compensation. This organization posed strategic questions to the Constitutional Review Committee. The strategic questions made by this organization are presented as follows:

**Table1: Strategic questions about land reform**

Strategic questions	A range of possible policy options
Who is it for?	Priority for landless and land-poor farmers; farm workers; peri-urban landless (ie. not commercial farmers except via commercial lending, and not agribusiness) – ie. <i>'equitable access' and not elite capture</i>
What is it for?	Smallholdings for individuals / small groups plus worker cooperatives on larger farms, for food production, and smallholdings for non-agric purposes – ie. <i>not replicating the big-farm model</i>
Where?	Strategically located land in highest demand, including commonage and private land, urban and peri-urban, subdivided where needed – ie. <i>get the land needed, <u>not</u> the land offered on the market</i>
How is it decided?	Identification of people – and the land they need – via participatory processes at local level – ie. <i>democratise land reform and beneficiary selection.</i>
With what tenure?	Priority on long-term secure rights, like private title or 30 year leases, to CPAs, cooperatives or family trusts – ie. <i>not 'caretakerships or mere absence of leases</i>
How to get the land?	Should this be through expropriation in each case, and is there a role for strategic purchase on the open market, promoting land donations, and negotiated acquisition alongside expropriation? – ie. <i>a range of methods of land acquisition?</i>
With what compensation?	Where expropriating, when should there be compensation, at what scale, and when should there be no compensation, and how will this be determined? – ie. <i>what is the compensation regime?</i>

**Source: PLAAS (2018)**

Source [n.d] <<https://www.parliament.gov.za/project-event-details/30>.

This organization submission has made 7 proposals to the Constitutional Review Committee on review of section 25 of the Constitution on land reform which are:

#### **5.4.5. Proposal 1: Develop a new compensation regime**

PLAAS proposes a flexible approach to compensation that is founded on the constitutional principles of 'just and equitable' while acknowledging explicitly that this might mean zero or limited compensation in certain types of cases. They proposed a compensation policy framework as a basis for developing policy and embedding key elements of this in law to be subjected to test cases.

##### **5.4.5.1. No compensation**

They indicate that the rationale for providing zero compensation in some cases is that the holder of the title deed has no effective occupation and use of the land and fails to perform the function of the property owner, and fails to uphold the social function and utility of land, as part of our common national heritage. Instead, long-term tenants should be recognized as the de facto owners of the property they already occupy, in the interests of property transformation, where tenants are poor and lack secure rights, compared to the holders of the underlying title. We identify four cases as a starting point for expropriation with no compensation, all of which can and doubtless will need to be tested.

##### **5.4.5.2 Inner-city buildings with absentee landlords:**

This organization mentions that is a need to address the situation of people living in inner-city buildings where there are absentee landowners who have abandoned the buildings, fail to maintain them, provide services, and maintain rates. In such cases, the occupiers should be recognized as the de facto owners, and there should be expropriation without compensation. This will contribute to changing property and class relations in our inner cities.

##### **5.4.5.3. Informal settlement:**

PLASS state that some 14% of South Africans live in informal settlements around our towns and cities, with no alternative place to go. They occupy land openly and for their own survival and, as such, have property rights that we must recognize and secure. Once there is a well-established informal settlement on the land, there is no justification for paying compensation (one norm used elsewhere in law, including internationally as in Brazil, is a five-year period after informal occupation). The state should expropriate both private and public landowners in order to secure the rights of people living in informal settlements and enable them to build secure livelihoods in our cities.

#### **5.4.5.4. Labour tenants:**

Labour tenants are farm dwellers who have occupied and used land on commercial farms for generations, who have their homesteads on farms, who have cropping land and keep livestock on grazing land. These are the last among the black farming class that was almost wiped out by the 1913 Natives Land Act. They evaded eviction. They are farming already. They have a historical right to the land that has been confirmed through their continued occupation and use of the land. The state should expropriate without compensation entire farms occupied by labour tenants, as already defined by the Land Reform (Labour Tenants) Act of 1996. Where appropriate, where there are commercial operations alongside labour tenants, the state should sub-divide and expropriate those portions of farms already used by labour tenants and aim to expand their access where appropriate.

#### **5.4.5.5. Publicly-owned land:**

Public sector entities, notable departments like the Department of Public Works, Department of Defence, and SOE's like Transnet, Eskom and PRASA, are significant land custodians, often of well-located but under-utilized land in towns and cities. The ANC needs to instruct state departments to much more actively dispose of land for inclusive urban development and transformation so as to bring poor people away from the periphery and into the centre of the cities. SOE-owned land can be expropriated where appropriate, while amendments to the Government Immovable Asset Management Act (GIAMA) are considered to incorporate SOE's within the ambit of this legislation. This will enable SOEs to prioritise the public interest, including land reform, over the return to the shareholder.

#### **5.4.6.6. Proposal 2: Amend and pass the Expropriation Bill**

The expropriation Bill of 2016, currently returned to Parliament, is consistent with the property clause, unlike the existing Expropriation Act, which is consistent with the Constitution in two aspects:

- (a) It limits expropriation to 'public purposes' rather than in the 'public interest', such as land reform.
- (b) It requires compensation at market price rather than 'just and equitable compensation, as provided in S25 (3).

#### **5.4.5.7. Proposal 3: Take the tests cases to the Constitutional Court**

This organization state that even while the Expropriation Bill is underway, the existing expropriation powers vested in the state can be tested through test cases which will allow the Constitutional Court to rule on what constitutes ‘just and equitable compensation in different circumstances.

Passing an amended Expropriation Bill while pursuing a well-selected set of test cases under the existing expropriation would provide a means of building jurisprudence and providing policy and legal certainty, subject to judicial review.

After the new Expropriation Bill is passed into law and becomes an Act, further test cases should be prepared to utilize its specific provisions on compensation. However, the government should not wait for the new Bill and rather test the existing expropriation system.

#### **5.4.5.8. Proposal 4: Draft and pass Land Redistribution Bill**

The proposal for a ‘Redistribution Bill’ is contained in the High-Level Panel report. It emerges from the fact that – unlike restitution and tenure reform – **the state’s obligation in S25(5) to provide citizens with access to land on an ‘equitable basis’ has not been interpreted in an operational law, nor has it been tested in the courts.** Do the state’s existing measures to provide access to land meet constitutional muster? Where we have evidence of elite capture by the politically connected, or business-people and allocation of land to them ahead of those whose needs are more desperate, we suspect that the state is systematically violating S25(5).

PLASS further mention that it is essential to have a law that provides power to citizens to hold the state to account for our rights of access to land on an equitable basis. This will shape the behaviour of state officials, require inter-governmental cooperation in the provision of access to land, and provide assurances of transparency and accountability.

The Redistribution Bill would need to do the following:

- Operationalize and define the right of equitable access to land to all citizens in South Africa.
- Set legal criteria for beneficiary selection
- Determine how land acquisition should happen
- Promote transparency and accountability
- Establish criteria and mechanisms for subdivision

- Obligated Municipalities to make commonage available
- Ensure people get long-term use and benefit rights
- Establish transversal dispute resolutions
- Promote alternative dispute resolutions
- Establish a Land Rights Protector as an ombudsperson

#### **5.4.5.9. Proposal 5: Draft and pass protection of Informal Land Rights Bill**

Basic protections to holders of informal land rights are currently afforded by the Interim Protection of Informal Land Rights Act of 1997 (IPILRA). As recommended by the High-Level Panel of Parliament (see pp 269-271), this should be amended, strengthened where appropriate, and made a permanent piece of legislation (e.g. a Protection of Informal Land Rights Act). In order to provide basic protections of the land rights of the poor, it is necessary that other relevant laws such as the MPRDA, the TGLFA and the Ingonyama Trust Act be made subject to the provisions of the new legislation.

It is critically important that questions of expropriation and payment of expropriation be addressed in the proposed legislation. The holders of informal land rights must be considered as the rightful ‘owners’ of this land and thus be appropriately compensated, should it be necessary to expropriate. It is also crucial that the issue of the duration of the beneficial occupation of land required to be considered a beneficiary of the law be addressed and that the current provisions (which in effect date occupation from 1992) be reduced to a minimum period of three years of beneficial occupation.

#### **5.4.5.10. Proposal 6: Draft and pass a Land Records Bill**

To transform property relations in South Africa and strengthen the rights of the majority who have no documented or official forms of property. Whether in informal settlements, on commercial farms, or in communal areas, most South Africans have no documented rights. This Bill will provide the basis for a bottom-up process of creating recognized rights for non-private owners of the property.

The Land Records Bill, as proposed by the High-Level Panel, will emulate the worldwide trend to record off-register forms of property. It will:

- Immediately record current occupation and use
- Incrementally clarify the content of rights
- Recognize inclusive forms of ownership, listing all family members, not just a household head, and therefore mitigate against gender discrimination

- Use quick and affordable technologies that can be rolled out at scale, unlike the Deeds Registry System
- Record shared rights using blockchain technology
- Require substantial investment in land administration – but technologies are available to link local offices with the national register.

#### **5.4.5.11. Proposal 7: Fix institutions and develop a new White Paper**

Two inter-related challenges remain: to fix our available institutions to drive a new land reform White Paper process to clarify, beyond what is contained in the law, the new land reform policy principles and procedures.

The Department of Rural Development and Land Reform faces massive deficiencies in its capacity to carry out its important mandate to effect land reform. This much is common cause and conceded by the Minister in her recent Budget and Policy Speech in Parliament in May 2018.

To address the institutional challenges, the Minister proposed a series of urgent remedial steps:

- Appoint a senior and experienced permanent Director-General (there have been acting DG appointments since 2016).
- Appoint senior and experienced permanent Deputy Directors-General to fill the DDG positions, many of whom are acting DDGs.
- Fill vacant posts in DRDLR.
- Develop a skills development and training programme for DRDLR officials.

Two further measures urgently needed to fix the institutions responsible for land reform in South Africa are:

- Appoint at least 5 full-time judges to the Land Claims Court; presently, there is only one judge on a part-time basis.
- Strengthen the capacity of the Office of the Valuer-General by constituting a highly-skilled team of valuers who, with a new mandate, can travel around the country to implement the new compensation regime.

PLAAS further states that a new White Paper on South African Land Policy is needed to provide overall coherence and strategic direction to the land reform process. The new compensation regime, which will be indicated in broad terms in the Expropriation Bill, needs to be elaborated more fully in the new White Paper. A nationally-inclusive and participatory

process is needed to craft a robust and legitimate White Paper that will frame a newly strengthened programme of land reform.

### **5.5. CONCLUSION:**

This Chapter presented, interpreted and analysed the data collected from the parliamentary constitutional review committee reports, oral presentations, written submissions and public hearings that were made by the public regarding the review of section 25 of the Constitution on land redistribution in South Africa. This chapter also analyzed and interpreted the data on the role of public participation in the land redistribution policy review, with specific reference to the expropriation of land without compensation, analyzing the views of the public on whether section 25 of the constitution should be reviewed or not, the mechanisms of public participation used by the parliament and also the individuals or civil society organizations involved in reviewing section 25 of the Constitution which provides for the equal redistribution of land amongst all citizens in South Africa. The research findings were analyzed and interpreted by using research questions as broad themes and sub-themes.

## **CHAPTER 6: CONCLUSION AND RECOMMENDATIONS**

### **6.1 INTRODUCTION**

This chapter will summarize and conclude the key findings of the study. It will provide a summary, conclusion and recommendations on findings of who are the individuals or civil society organizations that were involved in the land redistribution policy review, the mechanisms, the mechanisms of public participation that were used in the land redistribution policy review, the views that were made by the members of the public in the land redistribution policy review, and also it will summarize and conclude on the critical role of public participation in the land redistribution policy review.

### **6.2 CONCLUSION**

The views of the public play an effective role in designing and shaping policies that directly respond to the needs and aspirations of the citizens. This study finds that the parliament of South Africa used public hearings written and oral submissions to invite the public to engage on whether section 25 of the Constitution on land redistribution should be reviewed or not. The study reveals that parliament received more than 700 000 written submissions that were made by individuals, civil society organizations and other stakeholders interested in land redistribution. This shows that land redistribution still remains an issue that needs to be addressed by the South African government. The parliament of South Africa held public hearings in all provinces around the country to invite the input of the citizens on whether section 25 of the Constitution should be reviewed to allow expropriation of land without compensation in the interests of the public. Public hearings in provinces were held from 26 June to 4 August 2018. Public hearings were conducted for the period of six weeks by the Parliamentary Joint Constitutional Review Committee. The study finds that the role and purpose of public hearings, as stated by the Chairperson of the Joint Constitutional Review Committee on review of section 25 is that they want the citizens to answer the question as to whether section 25 of the Constitution is an impediment to land reform programme, and also to state changes and desires they want regarding land redistribution policies in South Africa. The study revealed that 65% of valid written submissions were opposed to changing section 25 of the Constitution, whilst 34% were in favour of the amendment of the constitution. A further 1% was undecided on whether section 25 of the Constitution should be reviewed or not. The majority of the citizens in South Africa states that Constitution should not be

changed or reviewed because it already provides for land redistribution and expropriation without compensation. However, if the majority of the public is of the point that section 25 of the Constitution should not be reviewed, then the parliament must find out what exactly is the impediment to the slow progress of land redistribution in South Africa.

### **6.3 RECOMMENDATIONS**

The researcher recommends that:

- The parliament of South Africa should also reach deep rural areas to listen to the views and concerns of the citizens. The majority of the people who live in rural areas were also removed from their land due to inequalities and injustices of the past therefore they should also be allowed to make a meaningful input on review of section 25 of the Constitution on land redistribution.
- The parliament should provide education programmes to the communities, especially in rural areas, on how to write a valid submission. Since some citizens, don't even know what a written submission and some can't even make valuable and valid arguments during public hearings.
- Government should encourage young people to pursue careers in agriculture and farming so that when people get access to land can be able to manage land for food production, agriculture, commercial farming, and food security for economic growth and development in South Africa.
- The state should redistribute land equally to all South Africans who were dispossessed from their land and to those in need to allow for expropriation of land without compensation in the interest of the public.
- The state should expropriate both private and public landowners in order to secure the rights of people living in informal settlements and enable them to build secure livelihoods in our cities.
- Section 25 of the Constitution on land redistribution should be reviewed to find a valid reason for the slow progress of land redistribution, even after 25 of democracy in South Africa.
- The parliament should amend and pass the land expropriation bill.
- The state should draft and pass the land redistribution bill.
- The state should also review the White Paper on Land Redistribution Policy 1997.

- The state should work with all parties involved, such as the public and all stakeholders interested in land redistribution.
- The department needs to improve its capacity to be able to solve the issue of land effectively and efficiently. The capacity can be improved by making sure that they appoint well qualified, experienced, strategic and innovative senior general managers that will come up with strategies and fix the institutions responsible for redistributing land in South Africa.
- If the majority of the public is opposing review of section 25 of the Constitution on land redistribution to allow mechanisms to expropriate land without compensation in the interest of the public, then the parliament must find out what exactly is the impediment to the slow progress of land redistribution in South Africa.

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