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# **Land Reform and Populism: Amending South Africa's Constitution**

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International Relations

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**Declaration**

I, Grant Colin Cloete, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature *Grant Cloete* .....

Date *30/06/2020* .....

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## **Abstract**

Land reform is a highly contentious issue in post-apartheid South Africa. Immediately after apartheid ended, the new African National Congress (ANC) government, on advice from the World Bank, adopted a willing buyer-willing seller approach whereby the government would pay market prices for land purchased from white landowners and transfer it to black South Africans. Unfortunately, land reform has progressed at a snail's pace due to a number of reasons including lack of political will, corruption, poor policy decisions and lack of implementation and diversion of the programme towards elites.

In 2018, the ANC decided to side with the populist Economic Freedom Fighters party (EFF) to pass a motion in parliament seeking to amend South Africa's Constitution to allow for land expropriation without compensation, currently prohibited by section 25 of the Constitution. The EFF has long supported this change; however, the ANC had opposed it and long claimed that the Constitution does not prohibit effective land reform. So why did they all of a sudden change their position?

Using populism and party competition theory as a theoretical framework, this thesis concludes that ANC's change of position is due to pressure from populist forces within South Africa and not because of an earnest desire to address the real challenges with land reform. The ANC, mindful of its failure on land and fearing a further loss of support to the EFF, thought it would be politically expedient to co-opt the EFF's position on land. In addition to this, populist forces within the ANC have also pushed for this change to try and regain control over the party and by extension, the country.

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# 1. Introduction

Recent years have seen the reignition of the land question in South Africa. The debate centres around the issue of land ownership and the fact that after 25 years since the end of apartheid the majority of agricultural land is still in the hands of the white minority. At its 54<sup>th</sup> elective conference in December of 2017, the African National Congress (ANC), South Africa's ruling party, officially adopted a motion to expropriate land without compensation, a process which is still ongoing. The session in which this proposal was adopted was tense and almost descended into fist fights. The idea of land expropriation without compensation is a contentious issue in South African politics and has produced significant discussion and disagreement. The ANC has, as this thesis will show, always been opposed to amending the Constitution to allow land expropriation without compensation up until its recent elective conference whereby it officially changed position on the issue.

The land question is a divisive issue in South African politics and tends to elicit an array of different responses. The decision to amend the Constitution to allow for land expropriation without compensation has been met with backlash and support from the various communities that exist within South Africa. There are many South Africans who fear that amending the Constitution will result in South Africa going the way of Zimbabwe which adopted a fast-track land reform programme in 2000 that resulted in economic collapse and food shortages. In the Zimbabwean case, many white farmers were forced off their farms (in some cases violently) and emigrated in significant numbers. To this day, Zimbabwe struggles with a collapsed agricultural output and food shortages. Others argue that amending the Constitution will be paid for investor confidence in South Africa; as investors pull out due to a "watering down" of property rights.

On the other hand, as evident by public hearings that were carried out at 34 venues across South Africa, many South Africans are hopeful that land expropriation without compensation will speed up land reform, lead to a more equal distribution of land holdings and help right the wrongs of the past.

This thesis aims to explore the factors that led to the ANC's decision to amend the Constitution to allow for land expropriation without compensation. In order to do this, the thesis will look at the context in which this decision was taken. It will explore the forces at work in South Africa that led to this decision and why it happened when it did. This will require a look at land reform in general in South Africa, assessing its failures and shortcomings. It will involve a look at the political climate in South Africa and the relevant actors involved in this process.

## 1.1. Background

It was in a speech on the 24<sup>th</sup> of February 2017 where former president Jacob Zuma first mentioned land expropriation without compensation saying the ANC was going to amend the laws in order to “enable faster land reform, including land expropriation without compensation as provided for in the Constitution” (Ntsebeza, 2018). He would repeat his calls for expropriation without compensation on the 3<sup>rd</sup> March 2017 during his appearance at the opening of the National House of Traditional Leaders. At the ANC’s national policy conference on the 5<sup>th</sup> July 2017 in Johannesburg, Zuma ended his address to the conference with the following: “We agree on the imperative to accelerate land redistribution and land reform. Again, we had robust discussions on the modalities to achieve this. We agree that using the fiscus for land redistribution must be accompanied by other measures if we are to achieve the goal at the required pace... Where it is necessary and unavoidable this may include expropriation without compensation. The Constitution provides for legislative changes to be effected in the democratic process” (Ntsebeza, 2018).

At the ANC’s 54<sup>th</sup> elective conference in 2017, the ANC adopted the proposal to amend the Constitution to allow for expropriation without compensation. The session in which the proposal was adopted was highly contentious and abrupt, with hardly any serious internal debate on the issue. The session almost came to blows and risked collapsing the entire conference (Hunter, 2017). Many analysts (Merten, 2017b; Roux, 2020) saw the adoption of the motion to amend the Constitution to allow for land expropriation without compensation as a conciliarity win by the overall “losers” at the conference i.e. the Zuma faction. President Cyril Ramaphosa allowed for the motion on amending the Constitution to pass in order to prevent the entire conference from collapsing and Zuma remaining president.

According to William Gumede (2017), an associate professor at the University of the Witwatersrand, the ANC tried to out-populist the EFF by adopting many of its slogans and ideas at the conference. The ANC passed the motion to allow the Constitution to be amended to provide for expropriation without compensation without any discussion as to why land reform has proceeded at such a slow pace under existing laws which, according to Gumede, “allows for expropriation of land for redistribution and public interest purposes” (Gumede, 2017). Only a few months prior to the conference, the ANC explicitly rejected a push by the EFF to amend the Constitution to allow for the expropriation of land without compensation. In addition to adopting the EFF line on land, the ANC also adopted a resolution to nationalize the reserve bank of South Africa; a policy which the EFF also calls for (Gumede, 2017).

AgriSA, which represents South Africa’s commercial farmers, believe that amending the Constitution to allow for expropriation without compensation is tantamount to “economic suicide”

(Isaacs, 2018). Former AgriSA President Dan Kriek believe that the amendment will lead to financial divestment from SA and a collapse in investor confidence (Isaacs, 2018). Despite the dire economic predictions regarding amending the Constitution, which many believe will further damage an already embattled South African economy, the ANC has decided to proceed with the amendment anyway. This begs the question: why?

The aim of this thesis is to show how populism has influenced land reform in South Africa. In particular, it aims to show how populist forces are behind the South African government's most recent attempt to amend the Constitution to allow for land expropriation without compensation. The purpose of this thesis is primarily to conduct an in-depth exploration and examination of a single case. However, a secondary purpose is to be able to analyse other cases that fall into a similar category (Bryman, 2016). For example, the insights gleaned from my thesis could be used to understand the way populists influence the immigration debate in Europe.

The next section of this paper is going to delve into the history of land reform in South Africa in post-apartheid South Africa and provide an appraisal of it. It is essential for answering the research questions presented later in the paper because it shows that land reform has failed due to several reasons which are entirely unrelated to land expropriation, or section 25 of the Constitution<sup>1</sup>. By clearly highlighting the challenges faced by the land reform programme, following section seeks to undermine and expose the notion that land expropriation without compensation is an earnest attempt to rectify its problems.

#### 1.1.1. Land Reform in South Africa 1994-2018

European settlers (mostly Dutch and German) first arrived in South Africa in 1652 at the Cape of Good Hope and subsequently progressed northward and eastward over the next 300 years. By the early 20<sup>th</sup> century, most of the land in South Africa was reserved for the white minority, with black Africans confined to "Native Reserves", which would later be called Homelands or Bantustans during apartheid. When apartheid ended, 86% of all farmland was in the hands of the white minority which consisted of 10.9% of the population. Moreover, this farmland was concentrated in the hands of approximately 60,000 owners. The majority of black South Africans remained relegated to the former homelands which were poverty-stricken, overcrowded and characterized by subsistence incomes and a high rate of infant mortality, malnutrition and illiteracy (Lahiff & Li, 2012)

The land reform programme in South Africa seeks to remedy over 350 years of race-based colonization and dispossession, starting from the early days of European settlement, beginning in 1652,

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<sup>1</sup> See Appendix 1 for the full text of section 25 of the Constitution

right through apartheid (which formally began in 1948) and up until apartheid officially ended in 1994, although many of its laws were abolished a few years prior. At the end of apartheid in 1994, the results of this large-scale conquest and dispossession was evident. 82 million hectares of commercial farmland were owned by 60,000 white farmers. 13 million black people were crowded into the former homelands, which represented only 13% of South Africa's land area. Due to decades of apartheid policy which favoured white farming over black farming, black rural households had been made dependent on white economic activity and migrated to the cities, mines and white commercial farms in order to make a living. This meant that small-scale agriculture was no longer an important source of income for many black rural households, although small-scale subsistence farming did in some cases exist. Rural households largely depended on the remittances that these migrant workers sent home in addition to wages earned. On the private, white commercial farms 3 million workers and their dependents were poorly paid, lived in terrible conditions and had no security of tenure (Cousins, 2016b).

The land reform programme is composed of three "legs" or pillars, namely: Land Redistribution, Land Restitution and Land Tenure Reform; each designed to tackle a different aspect of land reform. Each leg of the programme will be described below.

### **Land Redistribution**

Land redistribution is set out in Section 25 of the Constitution which states, "The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis" (Cousins, 2016b).

Land Redistribution up until the present has been discretionary and followed a "willing-buyer, willing-seller" model. Between 1990 and 1994 an economic policy framework, called the Reconstruction and Development Programme, was established after consultations with NGOs, the World Bank, the ANC and local and foreign academics. These consultations seldom included landless people. The Reconstruction and Development Programme committed the government to the goal of transferring 30% of land historically reserved for white ownership to black smallholders within 5 years (Williams, 1996). Despite opposition, the Reconstruction and Development Programme embraced a market-led and state-assisted model, reflecting the outcome of ANC and NGO discussions, and was aimed at the poorest South Africans, particularly women. The World Bank considered land as a productive asset and therefore land reform should fall under agricultural policy. This was in contrast to many South Africans and NGOs who saw land as more than a productive asset, as a means of dignity and justice for poor black South Africans.

From 1995 to 1999, land redistribution took the form of giving cash (R16,000 per household), called Settlement/Land Acquisition Grants, to poor households which would enable them to buy land

(Hall, 2004b). This policy was widely criticized because the cash amount given was too low, requiring large groups to pool their grants together in order to purchase land which lead to complex group dynamics and overcrowding. The policy also failed to provide adequate support and resources to beneficiaries making it hard for them to make a living from it (Hall, 2004b).

In response to criticism, a new policy was adopted in 2000 by then president Thabo Mbeki. This policy reflected a more neoliberal market-oriented approach to land reform which was part of a broader macroeconomic shift in economic policy under the Growth, Employment and Redistribution programme implemented by the Mbeki administration. This new policy kept the target of 30% but provided for another 15 years to reach it. It attempted to deracialize commercial farming in South Africa by creating a new class of black commercial farmers (Hall, 2004b). It specifically targeted individuals who had capital at their disposal and who showed potential as productive, commercially viable farmer (usually in the form of an agricultural diploma). Applicants would need to contribute a certain amount of funds towards the purchase of land and the government would match this amount (Hall, 2004b). Under this policy, it has been argued that land reform moved away from its original pro-poor approach towards a focus on commercial farmers (Cousins, 2016; Hall, 2004; Lahiff & Li, 2012).

In 2011, under President Jacob Zuma, land redistribution policy shifted again. The Proactive Land Acquisition Strategy came into effect enabling the state to purchase land on the open market and lease it out to beneficiaries (Hall & Kepe, 2017). This was a move away from earlier redistribution policies which saw beneficiaries purchase land directly. Initially, there was to be no transfer of title to the beneficiaries. However, this was amended through the State Land Lease and Disposal Policy of 2013, which allowed beneficiaries to lease land for a period of 30 years, renewable for a further 20 years after which it would then be possible to purchase (Hall & Kepe, 2017). In order to keep the land, beneficiaries must demonstrate competence and the land must meet productivity targets. This leasehold model is still currently in use (Hall & Kepe, 2017).

## **Land Restitution**

Land Restitution is set out in Section 25 of the Constitution as follows, “A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress” (Cousins, 2016b).

Land Restitution, unlike redistribution, is rights-based whereby “eligible claimants have the right to restoration of, or compensation for, land of which they were dispossessed” (Hall, 2004a). This refers particularly to land dispossessed for racial reasons after 1913 when the Native Land Act was passed and

came into effect. This act served to restrict the black population of South Africa to designated homelands or “Bantustans”. Black South Africans living outside of these homelands were, in many cases, forced from their land as part of a mandatory relocation scheme set up by the government. Between 1960 and 1983, an estimated 3.5 million people were forced from their land into the homelands. The restitution programme, adopted in 1994, is an attempt to restore land to those who were forcibly removed from it (Hall, 2004a).

Initially, the legal basis for restitution was provided for in the 1993 Interim Constitution (SA History, 2019). Later, when the 1996 final Constitution came into effect, the legal basis for land restitution was covered by section 25(7) of the Constitution and the Restitution of Land Rights Act (SA History, 2019). The act established a Commission on the Restitution of Land Rights (The Land Claims Commission) which assisted claimants in making their claims, investigating claims and preparing claims to be heard before the Land Claims Court, which was also established by the act. Claimants could opt either for land or for some other form of compensation such as cash. The owners of land acquired for restitution were compensated at market value (Cousins, 2016).

In 1997, the Restitution Act was amended due to complaints over the slow process of handling claims and brought it in line with the provisions of the 1996 Constitution. This amendment took effect in 1999, shifting the land claims process from a judicial one to an administrative one. Instead of having to access the Land Claims Court through the Land Claims Commission as was the case previously, claimants could now access the Land Claims Court directly. In addition to this, the Minister of Land Affairs was given greater powers to settle claims through negotiation (SA History, 2019).

Right before the 2014 General Election, the ANC re-opened the application window for further land claims to be made. The initial period had closed on December 31, 1998; resulting in 80,000 claims (Merten, 2017b). Tens of thousands of new claims were submitted to the Commission on Restitution of Land Rights. The processing of new claims was suspended by the Constitutional Court due to lack of public consultation. Processing of new claims would only be allowed to resume once all claims dating back to 1998 had been finalized or Parliament passed a new law by July 27, 2017. There remain thousands of claims from the original claims period that have not been finalized (Merten, 2017b).

### **Land Tenure Reform**

Land Tenure Reform is set out in the Constitution as follows, “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress” (Cousins, 2016b).

It is aimed at “protecting, securing and strengthening the rights that people have over land, especially where those rights are weak as a result of racially discriminatory laws and practices” (High-Level Panel, 2017, p. 4). A critical component of tenure security is the legal right not to be arbitrarily evicted from one’s home. South Africa’s Constitution obliges the state to work towards tenure security for those disadvantaged by discriminatory laws in the past. Section 25(6) states that “a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure of comparable redress” (High-Level Panel, 2017, p.4). Section 25(9) requires that government to build a legal framework to support this.

Various pieces of legislation were passed by parliament in order to protect farm dwellers, farmworkers and labour tenants. Two of the main pieces of legislation are the following: The Extension of Security of Tenure Act of 1997 and the Labour Tenants Act of 1996. The Extension of Security of Tenure Act “addresses the tenure rights of farm dwellers residing on land owned by others and it sets out the rights and duties of landowners and farm occupiers, and the procedures that must be followed to lawfully evict a person from the farm” (High-Level Panel, 2017, p. 279). The Labour Tenants Act “protects the insecure tenure and land rights of labour tenants as distinct from farmworkers” (High-Level Panel 2017, p. 279).

Although the government has passed legislation to enhance the tenure security of farm dwellers and labour tenants; there exists currently no meaningful legislation to enhance tenure security for those living in communal areas. The only piece of legislation which applies to communal areas is the Interim Protection of Informal Land Rights Act of 1996, an interim law which must be renewed annually (High-Level Panel, 2017).

### 1.1.2. An Appraisal of Land Reform

#### **Assessment of Land Redistribution**

Using the ANC’s own stated goals as a metric for success, land redistribution in South Africa has so far been unsuccessful. When the ANC assumed power in 1994, President Nelson Mandela’s administration promised that 30% of South Africa’s farmland would be redistributed by 1999. It had managed to redistribute only 1% by 1999 and 9.7% by 2018 (Herman, 2018). The pace of land reform has also significantly slowed from a peak of half a million hectares in 2007/2008 to only one-tenth of that in 2015/2016 (Herman, 2018).

The slow pace of land redistribution had several causes which are still up for debate in South Africa today. One of the commonly cited reasons for the slow pace of redistribution is the willing buyer

willing seller model which was adopted as the main method of land reform under the Mandela administration. This was the model that was recommended by the World Bank. Under this model, capital was to be made available to those who wanted land in the form of a financial grant. However, the financial grant was extremely small which meant that individuals had to pool their resources together to buy a plot of land. This had the adverse effect of forcing individuals from differing backgrounds and ambitions to farm together which in many cases resulted in conflict and/or an unworkable relationship.

Before the Mandela administration during apartheid, commercial farmers received a significant amount of state support in the form of tariffs and subsidies. This allowed the South African farming sector to remain viable. Under the Mandela administration, state support for the farming sector was removed. This made it difficult for beneficiaries of land reform who now had to compete with white farmers with minimal state support. This made it very difficult for new farmers to break into the market and become economically viable.

### **Assessment of Land Restitution**

The Advisory Panel on Land Reform and Agriculture, set up to support government on matters relating to land reform, concluded that the legislative framework for land restitution such as the Restitution Act “has not delivered substantive justice for those persons that lost land long before the 19<sup>th</sup> June 1913, and also the ones that lost land after this date”. The institutional challenges of the Land Claims Commission are numerous and range from a “lack of adequate and fiscal support to assistant claimants to investigate and settle claims, [to being complicit] in the application of ‘willing buyer, willing seller’ in the acquisition of property for land reform purposes” (Advisory Panel on Land Reform and Agriculture, 2019, p. 27). In regard to compensation, it relies too heavily on the Expropriation Act of 1975, which the report deems “draconian and archaic” (Advisory Panel on Land Reform and Agriculture, 2019, p.27).

In addition to this, the Restitution Act has failed to ring-fence land against future claims. After the re-opening of land claims in 2014, the Land Claims Commission received triple the number of claims that it received before the December 1998 cut-off date. The report claims that the vast majority of claims lodged after 1998 were in fact settled (Advisory Panel on Land Reform and Agriculture, 2019).

The report claims that the Land Claims Court has developed jurisprudence that solidifies the willing buyer, willing seller notion of compensation instead of “bringing to life, the meaning and import of ‘justice and equitable’ compensation” (Advisory Panel on Land Reform and Agriculture, 2019 p. 27). Additionally, the Restitution Act does not compel the state to provide support to beneficiaries once they have received the land. The report notes that this has proven to be highly problematic considering the high

number of projects where land has been restored which have then gone on to fail due to a lack of post-settlement support (Advisory Panel on Land Reform and Agriculture, 2019).

Further failures in land restitution came about due to President Zuma's repeated promises to traditional leaders that they would get restituted land, effectively ignoring the claims of ordinary South Africans who had been forcibly removed during apartheid. During this period, the restitution programme, which was originally designed to return land lost to black South Africans in "white" South Africa, became a programme which expanded the boundaries of the former homelands and bolstered the power of traditional leaders over land and people. For example, claims that had been lodged before 1998 were effectively put on hold in order to allow traditional leaders, and other elites, to lodge counterclaims, which was made possible by amending the Restitution Act to reopen the lodgement of claims. This holding back claims opened the door to further corruption, as described by a 2018 Special Investigating Unit report on 148 land reform projects spanning 2011 to 2017. The report found "major systemic weaknesses and an alarming absence of controls and mechanism to prevent fraud and maladministration in the Department of Rural Development and Land Affairs" (Claassens & Sihlali, 2020)

### **Assessment of Land Tenure Reform**

The High-Level Panel<sup>2</sup> Report commissioned in 2017 by Parliament titled the Assessment of Key Legislation and the Acceleration of Fundamental Change found that although land tenure reform had some successes, these have been "few and far between" (High-Level Panel, 2017, p. 28). There has been a drop-in hunger in the former homelands, but this has been attributed to the expansion of social grants instead of land reform specifically. The land policy itself has only "had a limited effect in addressing the problem of hunger" in the former homeland areas (High-Level Panel, 2017, p. 28). Furthermore, the report claims that although some people in the homelands are better off than before 1994, they vast majority still experience tenure insecurity and "many have been dispossessed of their land rights altogether" (High-Level Panel, 2017). This form of tenure creates insecurity because of its paternal notion of traditional leaders holding land on behalf of others. Instead of families having tenure over their own land, and the decision-making authority that stems from that, the balance of power is shifted in favour of rural elites; opening up room for power abuses.

The report goes on to highlight how the government has failed to support the holding vehicles it has created, such as Communal Property Associations (CPAs) or trusts. The report specifically mentions

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<sup>2</sup> The High- Level Panel was chaired by former President Kgalema Motlanthe and consisted of an independent panel of eminent South Africans tasked with assessing South Africa's current legislation and charting a new direction. Land reform was one of the issues it looked at.

“the difficulties that CPAs face in getting registered, developing written Constitutions and holding regular elections of committee members to prevent membership from stagnating or the CPA being ‘captured’” (High-Level Panel, 2017). Additionally, CPAs face the possibility that they will be opposed by traditional leaders who have political support and legislation behind them.

The report attributes this persistent tenure insecurity to a number of factors. Firstly, there is an absence of law governing communal land tenure, even though this is Constitutionally mandated in section 25 of the Constitution (High-Level Panel, 2017). The government has been unable to pass legislation that “captures the nuanced ways in which people experience and regulate relations of communal tenure in their everyday lives... without such a law, people are forced to rely on the poorly implemented and enforced interim measures provided for in the Interim Protection of Informal Land Rights Act” (High-Level Panel, 2017, p. 30). Furthermore, the report concludes that “the current legal framework and proposed legislation in respect of traditional governance or governance in areas under traditional leaders prioritises and gives preference to traditional leaders at the expense of ordinary rural people” (High-Level Panel, 2017).

A further indictment of land tenure reform comes in the form of a research paper presented in 2017 by researchers Ruth Hall and Thembela Kepe. They carried out a study in order to further understand why South Africa’s land reform programme was in crisis. They conducted their field research in a single district in South Africa (Hall & Kepe, 2017). Their findings showed a stark contrast between government aims and the reality that existed on the ground.

The study found that none of the beneficiaries in their case study had current documented land rights. State policy on land reform in 2017 involved leasing out land to beneficiaries. A notice of 30 days can be given for beneficiaries to vacate the land. None of the beneficiaries had valid leases as some were never issued a lease or the lease had expired with no follow-up. “In one case, a family was granted permission to occupy a state farm (without a lease) and asked by the Department of Rural Development and Land Reform to deliver an informal eviction notice to those already occupying it” (Hall and Kepe, 2017). This study reveals the dysfunctional nature of the land tenure reform system as it currently stands. Tenure reform was supposed to end the precarious land rights held by blacks during the colonial days and apartheid. By not having valid leases or documentation to prove their land rights, “beneficiaries” remain in a state of tenure insecurity.

In addition to tenure insecurity, Hall and Kepe’s case study found that all of the beneficiaries in their sample were completely unaware of the adoption of the State Land Lease and Disposal Policy which extends the time that beneficiaries must lease land until they can own it to 50 years (Hall & Kepe, 2017).

The government did not communicate this change in policy to them, leaving the beneficiaries with a false set of expectations in regard to owning their own land.

Hall and Kepe point out that insecure tenure as a result of the abovementioned points has practical implications for occupants of the land. Due to the lack of formal ownership/lease documents, land occupants cannot access capital to make improvements upon their land because banks will not loan money to them without official documentation. This lack of access to credit significantly stymies their ability to acquire inputs and make improvements upon the land; rendering it challenging for effective farming to take place (Hall & Kepe, 2017). Additionally, other “state institutions such as the provincial Department of Agriculture and Rural Development refuse to deliver services or invest in their land uses” due to the lack of clarity on the status of beneficiaries’ tenure (Hall and Kepe, 2017). Lastly, there were instances in the case study where beneficiaries who were making improvements to their infrastructure such as fixing holes in a shed were told to “cease such fixed improvements on government property” (Hall and Kepe, 2017, p). This highlights how crucial it is that beneficiaries receive proper documentation and information regarding their rights to the land they reside on.

In addition to this, the study found that state institutions are working at cross purposes. For example, the provincial agricultural officials that were interviewed by Kepe and Hall said that they would not be providing support to any of the projects in the case study because that was the responsibility of the DRDLR. The study found that there is a lack of communication and coordination between the two departments which resulted in beneficiaries receiving no support after receiving land, being sent back and forth between departments and having to, at times, wait many years before they receive any support (Hall and Kepe, 2017, p. 127). State institutions appear to be failing in their ability to coordinate between one another and support the people they are mandated to support.

Furthermore, due to the current purchase model, when property is transferred to the state from private owners, all operations on the farm immediately cease whilst the land is waiting to be transferred to the beneficiaries. Due to this, many farmworkers lose their jobs and their only source of income (Hall and Kepe, 2017). These farm workers are now stuck, unable to raise credit nor develop their land because of a lack of formal documentation. These farmworkers, in the study, expressed an increased sense of tenure insecurity because they went from employees of a private farm to undocumented occupants on state-owned land.

Lastly, Kepe and Hall found evidence of “elite capture” and state collusion with agribusiness in their case study. In two of the cases, the government had concluded leases with strategic partners instead of the beneficiaries themselves. This meant that the beneficiaries neither owned nor leased the land but

remained workers on state farms working for the partners. In both cases, the strategic partners, a condition set out by the department in order to receive financial support, were either established farmers or representatives of large agribusinesses. The strategic partners are supposed to work as mentors for the beneficiaries, but in these two cases the agribusiness company itself started the project and signed up farm workers as beneficiaries. Strategic partners and mentors receive benefits in the form of monthly state support and shares in joint ventures. In one case, Kepe and Hall found that, “the ‘strategic partner’ was an agribusiness which ran the PLAS farm as its own operation, directly siphoning the produce to its processing facility, without payment to the ‘beneficiaries’, whom it treated as employees (and paid below minimum wage) on the farm the state claimed to have bought for them” (Hall & Kepe, 2017, p. 128). The above suggest that state funds are being used to provide large agribusiness corporations with cheap or free access to land in the name of “redistribution”. Whether this is due to corruption by state officials or a narrow-minded focus on commercial farming at the expense of redistributing land to beneficiaries is up for debate (Hall & Kepe, 2017).

### **An Assessment of Land Reform in General**

Professor Michael Aliber, an agricultural economist at the University of Fort Hare in South Africa, argues that land reform has been slow in large part due to an “overemphasis on large scale farms [that has] led to the capture of the redistribution project by well-connected elites” (Mnwana, 2019). Professor Ruth Hall attributes the slow pace of land reform to, among other things, fiscal restraint, highlighting how land reform has been allocated only a tiny fraction of the national budget in the first ten years of democracy (1994-2004). Only 1% of the nation budget was allocated to land reform when the government took over in 1994, was even lower at 0.4% in 2019. She also claims that corruption and incompetence of state institutions for land reform contributed to this, as well as the government’s decision to pay market prices for land owned by whites instead of seizing it. In addition to this, Hall criticizes the government’s dismantling of state support, including subsidies and tariffs, for new black farmers, support which she attributes to the success of white commercial farming during apartheid. This liberalization of the commercial farming sector, as well as opening up to world markets has resulted in a situation where 2.5 million farmworkers have been evicted off farms as farm owners mechanize and respond to these new economic conditions. This meant that more black people have been evicted off farms than they have received land through land reform (Hall, 2019).

According to a report submitted to the Joint Constitution Review Committee in 2018 by the South African Institute for Race Relations (IRR), a research and policy organisation committed to addressing issues such as poverty, inequality and promoting economic growth, land reform has failed due to a number of factors (Institute of Race Relations, 2018). One factor is the miniscule land reform budget over

the years. Despite the fact that the government has claimed that unequal land ownership is one of the most important reasons for persistent poverty and inequality in South Africa, the budget has been under 1% of total budget expenditure for years (Institute of Race Relations, 2018). In 2018, the year that the motion to amend the Constitution was adopted, “R3.4bn had been allocated to land redistribution, but that was only 10% of the R30bn budget set aside for both agriculture and land reform” (Institute of Race Relations, 2018, p. 8). The budget for land restitution was only 0.2% of total budgeted expenditure in the 2018/2019 financial year. This small budget undermines the ANC purported commitment to realizing land reform in South Africa.

In addition to the lack of budget allocation towards land reform, the IRR argues that the government’s policies on land reform are flawed and ineffective. It criticizes the use of communal property associations (CPAs), which is where land bought by the government is transferred to. CPAs are tasked with deciding how the land should be used. This often results in conflict because CPA owners, who often come from a variety of backgrounds in many cases have differing ideas on how the land should be used. This conflict ultimately paralyzes decision-making (Institute of Race Relations, 2018). Additionally, CPAs open the door to corruption as some trustees “seem more intent on lining their own pockets than on acting for the benefit of their communities” (Institute of Race Relations, 2018, p. 10).

The IRR has also pointed out weaknesses in the government’s land reform policy, in particular the State Land Lease and Disposal Policy that was passed in 2013. Under this policy, prospective black farmers lease land from the government and only after 50 years that can purchase the land (Institute of Race Relations, 2018). Because of this, emerging black farmers struggle to raise loans as they have no collateral to provide and they are reluctant to make improvements and invest in their land because the government can terminate the lease at any time due to a lack of “production discipline” (Institute of Race Relations, 2018, p. 9).

In addition to this, there is a lack of support for emerging farmers. Once prospective farmers have received the land, there is very little support from the government post-transfer. Although South Africa provides agricultural extension services, the extension offers “have little relevant knowledge and manage to visit only 13% to 14% of small farmers, according to the government’s Agricultural Policy Action Plan 2015-2019 and other official assessments” (Institute of Race Relations, 2018). The Institute of Race Relations cite ANC MP Salam Abram has been on the parliamentary committee for agriculture for 12 years. He claims that the best mentors in South Africa are commercial farmers, and despite offering considerable support, their help has never really been accepted by the government. Other issues are small farmers’ inability to find markets, dealing with rising input costs, poor farming infrastructure and stock

theft and other crimes which are crippling, especially for small farmers (Institute of Race Relations, 2018, p. 9)

Another contributing factor to land reform failure according to the IRR is “gross bureaucratic inefficiency. Officials have lost control over the number of land claims that have been submitted, settled, wrongly claimed etc” (Institute of Race Relations, 2018). Land claims have been gazetted without proof of validity, or they have inflated the number of claims received. The IRR cite Magoesbaskloof in Limpopo as an example where “six claims in fact lodged by local communities spiralled to more than 600 as gazetted by bureaucrats” (Institute of Race Relations, 2018, p. 10). This picture of chaos in the bureaucracy around land reform is corroborated by the Legal Resources Centre which argue that the land claims commission has made “colossal errors” in the claims verification process and “needs to be urgently fixed” (Institute of Race Relations, 2018, p. 10). Very little progress has been made on this front.

Bureaucratic inefficiency significantly harms farmers who struggle to obtain working capital whilst their farms are under claim. Due to the uncertainty that arises out of this, they have very little incentive to continue investing in their farm. As a result, many farms that are currently under claim are “no longer worked, and large areas of productive farmland have effectively been frozen” (Institute of Race Relations, 2018, p. 10). This has had a negative impact on rural farmers who find themselves burdened by the lack of investment and low economic activity that lay in the wake of an inefficient bureaucracy. The former deputy president of AgriSA, an organization which represents the commercial farming sector in South Africa, has compared the restitution process currently underway in South Africa to the Boer War in terms of its damage to commercial agriculture. Whilst such a statement may seem hyperbolic, it is reflective of the concern with which some farmers regard the government’s handling of land reform in South Africa (Institute of Race Relations, 2018).

Lastly, fraud, corruption and elite capture as listed by the IRR as major obstacles to successful land reform. There have been instances whereby officials artificially inflate the price agreed to by the farmer under a claims process and pocket the difference once the settlement has been concluded. IRR cites a case where R12 million was pocketed, as the farmer asked for R8 million, but officials inflated the price to R20 million (Institute of Race Relations, 2018). Additionally, IRR has also found that there has been significant elite capture of the land claims process, a finding corroborated by the previously mentioned study by Hall and Kepe (2017). They highlight the case of Bekendvlei Farm in Limpopo whereby two ANC officials wanted to buy a farm but lacked the means to do so. After discussions with the land reform minister Gugile Nkwinti, the farm was brought by the land department in 2011 for R97 million. It was then leased by the two men, even though they had no farming experience and were not listed on the department’s data base of possible land reform beneficiaries. As reported by the Sunday

Times, it was alleged that the minister received R2 million to arrange the purchase and leasing of the farm. Auditing firm Deloitte investigated and found that Mr Nkwinti was “guilty of abusing his position as minister to influence the acquisition of Bekendvlei and should be charged with possible corruption” (Institute of Race Relations, 2018, p. 10). However, the final report made no mention of Nkwinti’s culpability. The Sunday Times (Africa, 2017) further reported that as soon as the two ANC officials took over there was no money to pay 31 workers on the farm, no wages were paid for months and the farm became dilapidated. After years of lavish spending and neglect and farm fell into disrepair and Minister Nkwinti was forced to evict the officials (Institute of Race Relations, 2018). This is only but one instance of a wider phenomenon of elite capture that has severely damaged the land reform process in South Africa.

In November 2017, the Commissioned Report for High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, commissioned by the ANC-dominated parliament was released. The report was compiled by former president Kgalema Motlanthe and was scathing in its assessment of how the government had managed land reform in post-apartheid South Africa. The report explicitly found that the state had mismanaged land reform due to several reasons: poor policy and leadership, weak institutions, low budgets, and corruption (Hall, 2018).

The report provided a devastating critique of current policies around land reform and offered alternatives. The report makes clear that the Constitution provides for “the right to equitable access to land, the right to tenure security and the right to restitution” (Van Der Merwe, 2017). The panel’s job was to assess legislation passed since apartheid ended and see if it was appropriate to meet the challenges of land reform. The report included submissions from the public and experts. The report called for a number of legislative amendments in order to address current capacity. It called for a review of the Traditional Leadership and Governance Framework Amendment Bill and the Traditional and Khoi-San Leadership Bill because they failed to uphold people living in traditional communities’ Constitutional rights (Van Der Merwe, 2017). The panel further reported that even where legislation was appropriate, there was a lack of implementation, or implementation severely lagged (Van Der Merwe, 2017). Lastly, it found that land reform has been slow because of constraints including “increasing evidence of corruption by officials, the diversion of the land reform budgets to elites, lack of political will, and a lack of training and capacity” (High-Level Panel, 2017).

The above section has highlighted the numerous challenges associated with the land reform programme in South Africa, which has fallen far short of targets set out in 1994. Among these challenges are corruption, a miniscule budget, a general lack of political will, poor implementation of policy, institutional and bureaucratic incompetence and exploitation of the programme by political elites who

seek to enrich themselves. The ANC has largely abided by a willing-buyer, willing-seller model without making use of expropriation powers granted to it under the Constitution. What is evident from the above section is that the issues relating to land reform have nothing to do with section 25 of the Constitution. In fact, the ANC have barely made use of expropriation as a tool in the 24 years of the land reform programme.

### 1.1.3. The ANC and Expropriation

The next section explores the ANC's history with expropriation. By reviewing this history, it becomes evident that there appears to be an unwillingness on behalf of the ANC to actually use the full scope of the Constitution, at it currently stands, to carry out land reform. Instead, the ANC has operated on a willing-buyer, willing-seller model despite admitting numerous times in the past that they intended to move away from it. In fact, as will be illustrated below, the ANC state its intention to move away from the willing-buyer, willing-seller in 2007, yet this continues to be the model primarily used for land reform, despite the Constitutional amendment proceedings that are currently underway. Another important thing to note from going through this history is the timing of declarations made by the ANC on this matter, usually right before elections.

As has been mentioned, the ANC has pledged to end the willing-buyer, willing-seller system many times in the past without much success. They have attempted to introduce new legislation, in the form of an Expropriation Bill, that would bring the government's expropriation powers in line with what is permitted by section 25 of the Constitution.

At the 2007 ANC elective conference, the ANC resolved to "immediately review the principle of willing-seller, willing-buyer so as to accelerate equitable distribution of land" (Merten, 2017b). The government attempted to pass a new Expropriation Bill in 2008 that would replace the Expropriation Act of 1975, an apartheid era law passed by the National Party dominated parliament at the of the time and still in effect today (Klug, 2016). The Expropriation Act of 1975 states that, "expropriation must be 'for a public purpose' and compensation is determined by the 'amount which the property would have realized if sold on the date of notice in the open market by a willing seller to a willing buyer', plus an 'amount to make good any actual financial loss or inconvenience caused by the expropriation'" (Klug, 2016). It has been argued by many that the Expropriation Act of 1975 privileges current holders of property and makes it significantly harder for the state to uphold the Constitution's imperative to address past land dispossession (Klug, 2016). The government's inability to pass a new expropriation law in the more than 20 years it has been in power means that they have been operating according to this apartheid-era law

which has essentially bound the state to a willing-buyer, willing-seller model, which is neither required by the Constitution nor has been helpful for land redistribution (Klug, 2016).

The draft Expropriation Bill of 2008 was an attempt to give legislative effect to the provisions provided for in section 25 of the Constitution. The bill sought to “require the recognition of unregistered rights... as well as provide new institutional mechanisms to regulate expropriations” (Klug, 2016, p. 55). Furthermore, the draft Bill sought to revise the standards for compensation bringing them in line with what was negotiated for during the Constitutional negotiations in the early 90s, providing the government with a broader scope for expropriation that did not require compensation to be paid at market value. It was met with significant opposition by property rights interest groups (Klug, 2016).

Under pressure from these groups, the government decided to withdraw the bill over concerns that it would not meet Constitutional standards. Five years later, in 2013, the government reintroduced the Expropriation Bill to parliament but again it could not be passed (Klug, 2016). It was once again brought back to parliament in revised form in 2015. This version of the bill acknowledged that there was space for a more aggressive land reform policy permissible under the Constitution was finally adopted by parliament in May of 2016, only three months before the municipal elections in August 2016; however, after sitting on the president’s desk for eight months it was returned to parliament citing concerns over lack of public consultation during its formulation (Merten, 2017a; Peyper, 2017). Effectively, this meant that the ANC had still failed to pass an Expropriation Bill 8 years after it was first introduced in 2008.

At the 2012 Mangaung ANC elective conference, the ANC once again committed itself to “expropriation without compensation on land acquired through unlawful means or used for illegal purposes having due regard to section 25 of the Constitution” (Merten, 2017b). The wording of this commitment is noteworthy because it implies that ANC believed at the time that expropriation without compensation was possible under the current wording of section 25. At the 2012 Policy Conference, held a few months before the elective conference, the ANC proposed to replace the “willing buyer, willing seller” principle in the expropriation legislation with “just and equitable” when land is being acquired for land reform purposes as provided for in the Constitution (Klug, 2016). The proposal included expropriation without compensation of “land acquired through unlawful means or used for illegal purposes” and “keeping nationalization as an option” (Klug, 2016, p. 55). This proposal was in response to the growing rhetoric that the willing buyer, willing seller principle was responsible for the slow pace of land reform.

On the 28<sup>th</sup> February 2017, only a year before the current motion to amend the Constitution was adopted by parliament, the EFF called for an amendment to section 25 of the Constitution to allow for

land expropriation without compensation; promising to provide the ANC with their seats in parliament to allow for amendment to pass the 2/3 majority required in parliament (Makinana, 2018). The motion was debated in parliament and shot down by ANC MPs and the main opposition party, the Democratic Alliance. Without the support of the ANC and the Democratic Alliance, the motion did not carry. The ANC defended their decision to not support the EFF on their motion by stating, “there is no need to amend the Constitution; we need to implement it” (Makinana, 2018).

After the motion was defeated, Zuma, who was president at the time, stated that the “black parties” should have united to pass the motion, a statement which contradicted the ANC parliamentary caucus (Nicolson, 2017). ANC Chief Whip in Parliament, Jackson Mthembu, made clear after the debate on the motion that “the ANC does not agree with any notion of the country expropriating land without compensation” (Nicolson, 2017). He would later go on to tweet that, “blaming the Constitution for [an] embarrassingly slow pace of land reform is both disingenuous and scapegoating” and that “section 25 of the Constitution is more of an enabler for land reform than a barrier” (Nicolson, 2017).

During discussions of the motion, ANC MP Phumuzile Ngwenya-Mabila who is chairwoman of the National Assembly’s Portfolio Committee on Land Reform exclaimed, “we know the history of land dispossession. We also know how we are going to address it. We are not going to be told what to do. We are not in an alliance with anyone else. We are a ruling government” (Makinana, 2018). In her rejection of the motion she proceeded to argue that that expropriation must respect the just and equitable requirement of section 25(2)(b) of the property clause and stated that, “we still believe that a just and equitable compensation is a solution as in other African countries, such as Lesotho, Malawi and Zambia” (Makinana, 2018). This sentiment was corroborated by another ANC MP, Phumzile Mnguni, who claimed that the EFF’s motion did not resonate with the ANC (Makinana, 2018). Furthermore, Deputy Minister of Public Works, Jeremy Cronin, stated at the time that it would be wrong to view section 25 of the Constitution “as an albatross around our necks” and proceeded defend the clause by saying that he agreed with former deputy chief justice Dikgang Moseneke “that clause 25 is in fact radical in both spirit and in its letter. And I concur with the Judge that it is misguided to blame clause 25 for the weaknesses in land reform... we don’t need to change the Constitution, we need to implement it” (Makinana, 2018).

Contradicting these statements, in a media briefing in parliament, the Minister of Rural Development and Land Reform at the time, Gugile Nkwinti, told reports that expropriation without compensation “is just an aspiration” and “this is not a policy of the ANC” (Choruma, 2017). The president of the ANC Youth League, Collen Maine has repeatedly called for expropriation without compensation, a view shared by the ANC Women’s League. The ANC appears to lack a coherent policy on land as evidenced by the contradictory statements made by its leaders (Choruma, 2017).

The above statements by high profile ANC members in 2017 reflect the ANC's apparent belief that amending the Constitution to allow land expropriation without compensation was not necessary. Instead, as argued by Jeremy Cronin the problem was one of implementation. Efforts to introduce an expropriation bill and to move away from the willing-buyer, willing-seller model, were undertaken with the belief that this could be done within the confines of section 25. However, despite these statements rejecting an amendment of the section 25 by high-profile ANC members in 2017, only 10 months later the ANC would U-turn on this position and instead support the EFF with the notion that amending the Constitution was imperative to speed up and fix the issues with land reform, and support the motion they introduced in parliament in February 2018

After a gathering of the ANC's National Executive Committee in 2018, President Ramaphosa announced that the ANC had decided to go ahead with amending the Constitution to allow for expropriation without compensation (Marrian & Mvumvu, 2018). He said that the decision was a result of the public nationwide hearings that were ongoing at the time. Ramaphosa also admitted that land expropriation without compensation in the public interest was permitted under section 25 of the Constitution as it currently stands (Marrian & Mvumvu, 2018). He stated that, "it has become patently clear that our people want the Constitution to be more explicit about expropriation of land without compensation, as demonstrated in the public hearings" (Marrian & Mvumvu, 2018),

### **Section 25 of the Constitution (The Property Clause)**

The above overview of land reform and its shortcomings was provided in order to provide insight into how land reform has been conducted in South Africa, and why it has ultimately been unsuccessful. The overview included the opinions of those who are well-versed in the field of land reform in South Africa. It also included the government's own report, the High-Level Panel Report, which highlighted the numerous challenges associated with land reform to date. What is noteworthy about the preceding appraisal of land reform is that the experts who study the issue generally appear to agree that although there are numerous factors that have contributed to its failure, the property clause is not among them. The factors that were identified pertained mostly to a lack of political will, including inadequate budget allocation, corruption, poor and inappropriate legislation, lack of implementation and bureaucratic inefficiency and incompetence.

The next section will look at expert opinion on whether the property clause provides a barrier to land reform.

According to Professor Pierre De Vos, a South African Constitutional law scholar who is considered by most of the press as an authority on all matters related to South Africa's Constitution,

section 25 of the Constitution explicitly allows for the state to expropriate property if it aims to redistribute to address the legacy of colonialism and apartheid (De Vos, 2013). The Constitution provides that the state must pay compensation that is “just and equitable” to the owner of the property. According to Professor de Vos, this means that compensation could theoretically be below market value and in some cases significantly so. The Constitution does not lock the government into paying market prices for property that is expropriated.

Professor Ruth Hall, researcher at the University of the Western Cape’s Institute for Poverty, Land and Agrarian Studies (PLAAS) and an expert on land reform, presented her opinion on section 25 of the Constitution at a lecture she held at The University of the Western Cape in 2018. Hall claims that the ANC government was happy with the property clause agreed upon during the Constitutional negotiations to end apartheid. She argues that section 25 of the Constitution does not provide a “blanket right to private property”, but instead clearly outlines in which cases land can be expropriated (Hall, 2018). According to the Constitution, land can be expropriated if it is in the public interest and is done in a way that is in accordance with the sub-clause requirement of “just and equitable”. The ANC government has never attempted to make use of the expropriation provisions granted in section 25 of the Constitution (Hall, 2018).

According to her, the property clause provides a strong mandate for the state to carry out land reform and compels the state to do so. Professor Hall points out that the National Party, which governed South Africa during apartheid, took the section 25 to court in an attempt to get it struck down but failed to do so. In other words, the ANC got exactly what it wanted with section 25. The ANC decided to go with the “willing buyer willing seller” model on advice from the World Bank and not because section 25 of the Constitution compelled it to do so (Hall, 2018).

Before the 2005 Land Summit which was organized by the Department of Land Affairs, ANC government officials were the most ardent supporters of the view that the policy and fundamentals were in place and what was lacking was government implementation (Ntsebeza & Hall, 2007). The ANC government has been reluctant to use its expropriation powers to acquire land for land reform purposes. Professor Ruth Hall attributes this due to a sheer lack of political will to do so. Some argue that this political will, which represents the left of the ANC, was essentially wiped out during the government’s move to replace RDP with GEAR; which arguably saw the defeat of the ANC left. (Ntsebeza & Hall, 2007).

According to former Deputy Chief Justice Dikgang Moseneke (Grootes, 2014),

“the Constitution does not protect property; it merely protects an owner against arbitrary deprivation. Deprivation that is not arbitrary is permissible. The property clause does not carry the phrase, ‘willing buyer: willing seller’, which is often blamed for an inadequate resolution of the land question. The state’s power to expropriate does not depend on the willingness of the landowner. The compensation may be agreed but if not, a court must fix it. The compensation must be just and equitable and not necessarily the market value of the land. Market price is but one of five criteria the Constitution lists for a court to set fair compensation. The property clause is emphatic that the state must take reasonable measures, within available resources, to enable citizens to gain access to land on an equitable basis.”

He goes on to say that in 2014, 20 years after the end of apartheid, his court hadn’t heard a single case regarding expropriation for public purposes by government. In other words, the Constitutionality of expropriation for public purposes had never been tested by government (Grootes, 2014).

According to Anton van Dalsen from the Helen Suzman Foundation, the ANC’s motion to amend the Constitution is merely a smokescreen used to hide the fact that the ANC has failed in its pursuit of land reform, largely as a result of corruption and lack of political will (Schwikowski, 2018). This smokescreen is evident by the ANC’s lack of clarity on why the Constitutional amendment needs to happen and what its implications will be. As van Dalsen points out, the government “still has to decide which land will be targeted, who will benefit, what kind of help will be available after resettlement and what kind of legal right those who already live there have” (Schwikowski, 2018). The fact that the government hasn’t answered these fundamental questions on land reform yet decides to push ahead with a Constitutional amendment to the property section is illustrative of the motives for the amendment in the first place. Ben Cousins, researcher for the Institute of Poverty, Land and Agrarian Studies and an expert on land reform is also critical of the government’s lack of transparency on the whole process (Schwikowski, 2018). He mentions that Ramaphosa was opposed to expropriation without compensation before the 2017 electoral conference but changed his tone after it. He attributes this to the “balance of forces within the ANC” which have forced him to articulate this as policy (Schwikowski, 2018).

Two ANC members who were present at the Constitutional negotiations around section 25 in the early 90s have stated their belief that the Constitution does not need to change and is not a barrier to land reform. According to retired Constitutional Court judge Albie Sachs, Section 25 of the Constitution does not need to be reviewed because it allows expropriation and radical land reform to take place. He has said, “we can achieve very substantial radical land reform without expense, without altering the Constitution. Now the debate has shifted on how we can achieve land expropriation without compensation – it became the debate. Can it be achieved without altering the Constitution? I think a very strong case can be made from that” (Barbier, 2018). Valli Moosa, a former ANC cabinet minister and one of the experts tasked with briefing the ad hoc committee on land expropriation without compensation, stated that in 2019 that the failure of land reform was not because of section 25 of the Constitution, but instead due to other

reasons which he refused to expand upon due to fears of attacking his own party” (Merten, 2019; Mkhwanazi, 2019).

The above section provided some insight into what experts on South Africa’s Constitution think about the decision to amend the Constitution. All of them tend to agree that section 25 is not a barrier to land reform, and the reasons for failure on land reform lie elsewhere. In fact, some argue that not only is section 25 not a barrier to land reform, it enables it and provides a clear mandate for it to be done effectively. All of the above just further illustrates that the ANC’s desire to amend the Constitution comes has to do with reasons other than a genuine attempt to speed up land reform and fix its many problems.

## 1.2. Research Questions

- a. What are the factors that led to the ANC’s decision to support amending the Constitution to allow for land expropriation without compensation?
- b. Why has land reform been so slow under the leadership of what had been described as a revolutionary party?
- c. How has it been possible for the EFF to arise to the ‘left’ of the ANC and capture some of its support base?
- d. In what ways is the EFF a populist party?

## 2. Conceptual Framework

The main conceptual framework used for the analysis of this paper is populism, with party competition theory used as a supporting framework. In the next section, an exploration of populism will be undertaken which looks at how populism is conceived of by different authors and what are commonly regarded as its characteristics. It will also briefly look at the theory on party competition, particularly in regard to how mainstream parties react to new, challenger parties that enter the political scene. Later on, this theoretical framework is used to establish actors in South African politics as populist and give credence to the main argument of this thesis which is that mainly populist forces are behind the ANC’s change of position in regard to amending the property section (section 25) of the Constitution.

### 2.1. Populism

There is a lot of debate and differing viewpoints on populism. Despite these differences, most authors on populism tend to agree that, fundamentally, populism has to do with the characterization of a people versus an elite. Moffit and Tormey (2014) are critical of previous attempts at conceptualizing

populism, which focus more on populism as “ideology, logic, discourse and strategy/organization” and instead use the category of “political style” in order to understand it. Instead of focusing on populism as it relates to a political organization’s content, they instead focus on its performative features.

The model consists of three major elements in understanding populism: ‘appeal to the people’; ‘crisis, breakdown and threat’ and lastly, ‘bad manners’ (Moffitt & Tormey, 2014). A party or individual should not be considered populist if it merely possesses one of these elements. The model should be understood as the sum of its parts, not the parts themselves (Moffitt & Tormey, 2014).

The first element, “appeal to the people” refers to the populist tendency to claim that is the only true representative of the people and is acting on the people’s behalf. Populists often portray themselves as a vanguard of the people taking on a corrupt or otherwise uncaring elite. In this way they conjure up an us vs. them mentality. Us is the people verses them the elites. The elites are portrayed as the source of all the woes that have befallen the people.

The second element, “crisis, breakdown and threat”, refers to the way in which populists tend to portray themselves as the solution to a crisis or breakdown that has occurred in society. Events tend to be portrayed as emergencies that require immediate action; legitimizing the populists’ call for radical, quick action as opposed to iterative action that is the mainstay of modern governance. The breakdown of a workable relationship between the people and the ruling authorities is commonly cited by populist parties as their reason for being. They hope to remedy this breakdown by responding to the crisis with quick, decisive solutions and restoring the trust between the people and their government.

The last element, ‘bad manners’, refers to the way in which populists generate their appeal by deliberately ignoring conventional ways of behaving in politics. As Mbete (2015, p.39) points out, populists “mark themselves as the practitioners of a kind of low politics that is opposed to the high politics of the elite”. By contrasting themselves with the conventions of politics and the rules and procedures that follow, populists hope to distance themselves from the elite and bring themselves closer to the people (Mbete, 2015).

Cas Mudde, a political scientist who focuses on political extremism and populism in Europe, argues that populist parties have two core elements. On the one hand, is the juxtaposition between the “pure people” and the “corrupt elites” and on the other, a belief that the driving force of politics should be the “volonte generale” or will of the people (Mudde, 2004).

Acemoglu, Egorov and Sonin (2013) have shown that populism is likely to develop in societies where voters fear that their elected officials have been co-opted by the elites or exhibit a right-wing bias

in their policies. In this environment, to appeal to voters, politicians might adopt left-wing rhetoric on policies despite their own convictions and track record in policymaking being moderate or right wing. In other words, in this environment, populists will shift to the left in order to capitalize on voter suspicion of right-wing bias and corruption by the elites (Acemoglu, Egorov, & Sonin, 2013)

Another source of populism was illustrated by Luiz (2015) in his research that looks at how Middle-Income Traps can stimulate populist trends within a country. A Middle-Income Trap is an economy that once experienced high economic growth and then suddenly experienced a sharp decline, unable to return to the days of high economic growth. According to Luiz (2015), this sudden decline in economic growth, combined with High-Levels of inequality, seems to be fertile ground for political instability and tensions within a country.

Leslie Dikeni (2017) makes use of Canovan's (1999) theoretical and analytical framework for understanding populism. Canovan (1999) identifies three forms of populism: populism of the little man, authoritarian populism and revolutionary populism. Populism of the little man refers to views held by small businesses and farmers that hold big business and government in opposition to them. In their view of the world, big business and government represent the "elite" whose interests are diametrically opposed to their own. They advocate for solidarity among small businesses. An example of this type of populism is the agrarian populism of American Populist Party in the 1890s (Dikeni, 2017). Authoritarian populism refers to charismatic leaders who appeal directly to the people and often hold reactionary views e.g. Hitler. Revolutionary populism, which Dikeni argues is the dominant form of populism in South Africa today, builds a romanticized notion of the people and rejects elitism, progress and political institutions they deem as such. This form of populism supports charismatic leaders who support the will of the people and aim to take over the power of the elites and return it to the people (Dikeni, 2017).

Similar to Moffit and Tormey, Robert Jansen (2011) reconceptualizes populism as a practice, meaning a way in which politics is done rather than its outcome. In other words, populism as it relates to politics is a means to an end rather than an end in itself. Jansen understands populism as a type of political mobilization that involves a political project (Jansen, 2011). A political project is a "concerted and sustained set of political activities—a package of mobilization and discursive practices—that maintains a degree of enduring coherence, both in terms of its rhetorical underpinnings and its ongoing enactment" (Jansen, 2011). What makes a political project populist is the way it mobilizes disenfranchised and marginalized group and brings them into the public and political arena by "articulating an anti-elite, nationalist rhetoric that valorises ordinary people" (Jansen, 2011). In order to undertake this populist political mobilization, populists must construct the notion of a "people", which is done in several ways including minimizing the aspects that make them different and stressing the aspects that unify them

(Jansen, 2011). The unifying aspect of the people is that they are treated badly by the elites in some way. Populists attempt to construct a shared sense of injustice and disillusionment which can be remedied by the objectives laid out by them (Jansen, 2011).

Margaret Canovan (1999) attempts to answer the question: is populism democratic? In her paper, she acknowledges that democracies inherently contain notions of popular power and popular decisions. Canovan conceptualizes populism as “an appeal to the ‘people’ against both the established structure of power and the dominant ideas and values of society” (1999, p. 3). Even though democracy contains these elements, populists are often seen as dangerous to democracy. She puts forward a number of reasons as to why populists are seen as a threat to democracy. One reason is that democracies as we understand it tend to be “liberal democracies” and populism is inherently “illiberal” (Canovan, 1999). Liberal democracies are built upon principles passed down through the liberal heritage. Two important principles are freedom of expression and the rule of law (Canovan, 1999). Liberalism, in a sense, can place limits on democracy itself with its emphasis on the rule of law as inviolable. Most liberal democratic societies possess Constitutions which have rules/laws that cannot be violated regardless of democratic decisions that are taken. In this sense, liberal democracies are set up in such a way as to avoid majoritarianism; whereby a majority can rule over a minority by democratic means (Canovan, 1999).

Canovan puts forward her theory on the ‘two faces of democracy’ which sees democracy made up of two distinct, but at times overlapping elements: redemptive and pragmatic democracy (Canovan, 1999). She builds upon Michael Oakeshott’s (1999) characterization of the two elements that he believed encompassed politics throughout modernity: the politics of faith and the politics of spectrum. The politics of faith encompasses the belief that politics can ultimately achieve perfection or salvation; that it is more than merely a tool to keep peace and order in a society. On the other hand, the politics of spectrum which reflects the belief that the government is merely a peacekeeper and can do little more than “improve the system of rights and duties and the concomitant system of means of redress, which together compose the superficial order” (Canovan, 1999). It is the tension between these two elements, their interdependence, and the “void” that arises out of this tension that gives rise to populist mobilization (Canovan, 1999). Canovan mentions three tensions that create this “void”. The first tension is the tension between the mechanical, procedural side of democracy which attempts to regulate conflicts without degenerating into civil war or repression, uphold and promote democratic institutions and emphasizes the rule of law; and the redemptive side of democracy which promises a better world through human action (Canovan, 1999). When the gap between these two sides widens too much, populists find their opportunity in promising a move away from the mechanical, procedure side of democracy towards a democracy that is aspirational of

the people. In other words, they promise to “renew democracy” and restore its orientation to the wishes of the people (Canovan, 1999).

The second gap lies between the democratic promise to people that they are the ultimate sovereigns over their own lives and should have the ability to assert themselves onto major issues and take control of them to their own benefit; and the actual functioning of democracy as a representative democracy which elected officials that act on the people’s behalf (Canovan, 1999). Populists thrive in the space where the people feel that their representatives, and the institutions surrounding them are no longer responsive to their needs. Lastly, populists exploit the gap that emerges between the bureaucratic functioning of democracy, with its cacophony of procedural steps and professional expertise required to affect change on the one hand, and the “romanticism of a spontaneous expression of the will of the people” on the other (Canovan, 1999, p. 13). Populist movements exploit this gap or void by putting forward charismatic leaders who promise to the people that they will break through these stifling bureaucratic procedures (pragmatic democracy) and bring politics closer to the will of the people. In other words, they promise to bring forth the redemptive aspect of democracy as a counterweight to the pragmatic aspect (Canovan, 1999).

According to Torodov (2012), populists ensure that their messages to people are simple so that they can be understood and conclusions that derive from the message can be easily reached. They attempt to gain support by directly addressing the grievances that a people may have towards their government; grievances which in many cases can be legitimate, yet complicated and nuanced. The danger of populists is that they attempt to provide solutions to these grievances that are too simplistic, failing to consider the complexity of the problem. They tend to avoid grey areas. All of these tactics are designed to try and win the favour of the people; hence why populists depend on capitalizing on the “emotions of the moment” (Torodov, 2012: 145). Offering simple solutions to citizens to fix immediate problems is done in order to win their trust, even if these solutions will not be viable in the long term (Torodov, 2012).

## 2.2. Party Competition Theory

In addition to populism, Meguid’s (2008) theory on position, ownership and salience, used to describe political party interaction, will be used to understand the ANC’s policy shift in response to the rise of the EFF. Meguid’s theory draws on previous research on position-taking during elections and builds upon spatial theory, a theory which sees parties as actors in a spatial field which change position in order to implement policies, enter political office or improve their electoral success. Meguid claims that mainstream parties seek to shift their position in response to niche parties and alter the salience and ownership of a given issue through their actions and non-actions. This is done through either an

accommodative or an adversarial strategy. The adversarial strategy is where the mainstream party takes a hard-line against a policy put forward by a niche party, hoping to distance itself as much as possible from said policy. The accommodative strategy is when the mainstream party tries to project itself as the right owner of an issue proposed by a challenger party and moves its position towards the party (Meguid, 2008).

Previous research has shown that political parties are more likely to shift policies when challenged by another party within their ideological family (Adams & Somer-Topcu, 2009). Mainstream parties with a similar ideological orientation to the challenger party are more likely to change their position after the challenger party has entered the political arena; shifting their position towards the challenger party's position in order to siphon off potential voters from the challenger (Adams & Somer-Topcu, 2009). Somer-Topcu (2009) showed that parties tend to shift their position after election as a result of losses, an effect which decreases with time after the election.

### 3. Methodology

#### 3.1. Research Design

The research design of this thesis is a qualitative study using a case study design. A case study design helps me operationalise my conceptual framework (Yin, 2009). Quantitative research tends to follow a deductive approach to research whereas qualitative research follows an inductive approach. According to Bryman (2016, p. 688), a case study entails the “detailed and intensive analysis of a single case”. It is concerned with the complexity and particular nature of case, with the case being an object of interest in and of itself and the researcher seeking to provide an in-depth examination of it (Bryman, 2016). According to Yin, case study research papers tend to be descriptive, exploratory and allow an in-depth study within a specific context (Yin, 2009). Case studies are useful when a topic is being explored for the first time or in a new way. There is very little literature on left-wing populism in Africa and even less in the South African context. This thesis is an attempt to remedy that. Furthermore, Yin (2009) sees case studies as particularly helpful when a thesis is concerned with a “how or why question” as it relates to an event or phenomena; or when a thesis wishes to explore the context of a phenomenon. For example, the decision to amend the Constitution is complex with a variety of different contextual factors at play. Lastly, a case study design can help with operationalizing the conceptual framework, which in this case is populism.

#### 3.2. Data Collection

My research question and sub-research questions helped guide me in deciding what data I would need. Each sub-research question looks at a different, but important aspect of my case.

Both primary and secondary sources of data were used in this thesis. The primary data include political party documents and public statements and speeches made by politicians. Secondary data includes data that is collected and analysed by other researchers and includes news articles and journal articles. This includes news articles, books, peer-reviewed journal articles. In this thesis, secondary data is the main source of data and is chosen based on how relevant it is for answering the research questions presented above. The primary data in this study mostly consisted of statements made by political actors, in speeches or documents. It was important to use primary data in this case in order to get an accurate sense of that political actor's sentiments towards an issue, and not rely on second-hand accounts of what that actor said.

The secondary data could be divided into two sub-groups, data related to land reform and data related to the theory of populism. The advantage of mainly using secondary sources of data is that it is cost and time effective. With internet access and the VPN provided by NMBU it is quick and easy to access journal databases and get around the paywall that many of them have in place. Therefore, it is easy to gain access to lots of high-quality, peer-reviewed data. A thematic analysis approach was used on the data sources. This involves identifying and analysing themes and sub-themes that exist within data sets to identify significant patterns and ideas. (Bryman, 2016).

NMBU's library database portal was my main source for finding secondary literature. It provided me easy access to journal article databases. I used journal articles mainly for researching populism. The literature on populism helped constructing populism into a conceptual framework that was then used to analyse the different phenomena in my findings. In addition to populism, NMBU's library database was also used to search for literature on land reform. On the topic of land reform, the work of Professor Ruth Hall, a researcher for the Institute of Poverty, Land and Agrarian Studies (PLAAS), was used extensively. She, like many of her colleagues at PLAAS, is an expert on land reform in South Africa. The High-Level Panel commissioned by former president Kgalema Motlanthe also proved to be a vital source of information for understanding the challenges associated with land reform. It was important that the data was triangulated with other sources in order to ensure its reliability and credibility.

### 3.3. Limitations

According to Yin, the biggest concern with a case study design is whether the research is rigorous enough (Yin, 2009). Considering that I was not able to carry out interviews, my research primarily relies

on secondary sources, although primary sources have been used too. The risk with using secondary sources is that there is a possibility that they may not accurately present the data they purport to have analysed. For example, my data would've been more reliable if I could have directly talked to some of the actors in my thesis, rather than rely on their statements and press releases. Speaking to them would've allowed me to get a deeper, and more fleshed out understanding of their viewpoints. Also, by using certain secondary sources, like news articles, there is a risk that the actors may have been misrepresented by these sources. Additionally, being able to conduct interviews would've added another dimension to the triangulation of data, which Yin argues is essential to a case study's ability to "deal with a full variety of evidence" and contribute to data reliability (Yin, 2009, p. 18). Being able to effectively triangulate data allows for a deeper exploration of the different dimensions of a case and as a result provides a more comprehensive answer to the research questions. Therefore, my overreliance on secondary data undermines the reliability of my data and the integrity of my findings; thus, compromising my ability to effectively answer my research questions.

## 4. Findings & Analysis

In order to understand why land expropriation without compensation is back on the table for South Africa, it's important to look at where the idea comes from and who the actors are that are largely responsible for its recent prominence. The decision to amend the property clause represents the culmination of forces that have emerged and evolved over many years in South Africa.

The main driving force in this case is the emergence of populism. Although there are numerous populist forces at work in South Africa, the ones most relevant to this thesis are in the form of political personalities and the parties that have been formed by them. In order to understand populism in post-Apartheid South Africa; it is essential to focus on former President Jacob Zuma, Julius Malema and the EFF. Zuma, Malema, and later the EFF which he founded, would prove to be the most vocal articulations of expropriation without compensation post 1994. Although the idea of expropriation without compensation predates these actors, they have been instrumental in reviving it and bringing it to the fore of the discussion when it comes to land reform.

After Jacob Zuma, Julius Malema and the EFF are firmly established as populists, the analysis will show how these populist forces are ultimately the reason behind the ANC's shift of position. The analysis will illustrate how populist elements within the ANC, EFF pressure, a looming election and attempts to salvage ANC support are the salient forces behind the decision to amend the Constitution, instead of an earnest desire to address the shortcomings and slow pace of land reform.

#### 4.1.1. Jacob Zuma

Jacob Zuma was president of South Africa from 2009 until his resignation in 2018. He was, and continues to be, a divisive figure in South African politics. He joined the ANC in 1959 and after serving in number of different positions was appointed Head of Underground Structures, and shortly thereafter, Chief of the Intelligence Department at the ANC Head Office in Lusaka where he lived in exile due to his opposition to apartheid (SA History, 2020). After the ANC was unbanned, he moved back to South Africa. Zuma was deputy president of South Africa from 1999 to 2005 under the Mbeki administration. After Mbeki was forced to resign in 2008, Kgalema Motlanthe took over as acting president, after which Zuma assumed the presidency in 2009 when the ANC won the 2009 general election.

In the run up to the elections in April 2009, Zuma adopted a populist electioneering strategy which involved, among other things, campaigning in poor areas, tailoring his message to appeal to the poor and working-poor and building up his charismatic image as a champion of the marginalized black South Africans (Resnick, 2010). Zuma made it a point to walk around in poor townships and interact with the people on the ground, hearing their stories and promising to better their lives. This was in sharp contrast to Mbeki who was seen by many as aloof, technocratic and distant from the average South Africa (Resnick, 2010). Zuma's lack of formal education and upbringing as a goat herder helped to solidify his populist appeal, endearing him to poor South Africans who felt they could connect with him. He took great care to portray himself as a man of the people and made sure to contrast himself to the out-of-touch Mbeki (Resnick, 2010).

Zuma was also a man who could generate significant controversy but nevertheless use his charisma to portray himself as a victim of a distant elite, hostile to the interests of the poor. When he went on trial for his corruption charges, his supporters would stand outside the court room singing struggle songs. One such famous example is the song "Bring Me My Machine Gun" (Resnick, 2010). In keeping with his charismatic style, Zuma, an avid dancer, would regularly sing and dance at his mass rallies. According to Foster (2009, p. 6), he managed to portray himself as "a type of messiah who could revolutionize their lives". Additionally, Zuma did not shy away from emphasizing his Zulu identity in an attempt to court Zulu voters in Kwa-Zulu Natal (a majority Zulu province of South Africa), in contrast to Mbeki who took great efforts to constantly downplay his Xhosa background in favour of a broader, inclusive South African identity (Resnick, 2010).

During his 2009 election campaign, Zuma supporters began wearing T-shirts imprinted with Zuma's face, with text saying "100% Zulu boy". He would often incorporate Zulu phrases into his speeches and name campaign rallies after Zulu words, for example Siyanqoba which translates to "to

conquer” (Resnick, 2010). This campaigning on his Zulu identity helped him to wrestle control of the province of Kwa-Zulu Natal, a Zulu stronghold, from the Inkatha Freedom Party, a Zulu nationalist party (Resnick, 2010). The ANC made significant inroads in the election which political commentators largely ascribe to the identity of Jacob Zuma, rather than the appeal of specific policies (Resnick, 2010). In 1999, the ANC only won 39% of the vote in Kwa-Zulu Natal as opposed to the 64% it managed to win in 2009 with Zuma at the helm.

### **State Capture**

Jacob Zuma has been deeply implicated in a number of corruption scandals dating back to his term as deputy president of South Africa. Prominent corruption scandals include the South Africans Arms Deal and his close association with the Gupta family, an association which has come to be understood as one based on corruption and “capture” of the South African State (Arun, 2019). During Zuma’s second term in office (2014-2018), evidence began to emerge that Zuma, his family and friends, in tandem with the Gupta family, a wealthy immigrant family from India, had sought to “capture the state”. In essence, what capturing of the state, or “state capture” refers to in this context is the systematic plundering of public resources. This included the following: appointing cronies to critical posts in cabinet and the public service; appointing cronies to the boards and top managerial positions of state owned enterprises in order to manipulate the tender process in favour of specific companies; and lastly, the intentional undermining of Constitutionally set-up state institutions designed to hold those in power to account (Southall, 2019).

State capture had been allowed to proceed as it did because of Zuma’s capture of the ANC itself, effectively rendering the party complicit. Despite numerous parliamentary motions of no confidence in Zuma brought upon by the opposition, and in the face of overwhelming evidence of his involvement in corruption, the ANC continued to support Zuma until the very last days of his presidency. Party members who tried to call Zuma out on his corruption were marginalized. Political appointees at all levels of government joined in the looting, and the whirlwind of corruption and greed got so extreme that the party experienced a surge of intra-party killings, contributing to South Africa’s growing reputation as a mafia state (Southall, 2019). Zuma resigned as president of South Africa in 2018, after Cyril Ramaphosa won the leadership battle and became head of the ANC at the 2017 ANC elective conference.

During the Mbeki administration, a rift began to emerge within the ruling tripartite alliance which consisted of the ANC, the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP). The rift emerged because of COSATU and SACP disapproval of the ANC’s movement away from the redistributionist policy framework set out by the statist Reconstruction and Development Programme adopted by the government in the mid-90s towards a more market-oriented

neoliberal framework from 1996 onwards (Resnick, 2010). The new policy framework, called Growth, Employment and Redistribution (GEAR) favoured privatization, reduced tariffs and “productivity-linked wage rates” (Resnick, 2010, p. 20). Whilst South Africa experienced an increase in economic growth after the adoption of GEAR, conditions for the poor remained tough and unemployment, particularly among urban youth remained stubbornly high (Resnick, 2010). Services delivery in townships and poor areas remained inadequate. Discontent towards these conditions began to emerge under the Mbeki administration as service delivery protests “increased from 5,800 to over 10,000 between 2004 and 2006” (Resnick, 2010, p. 20).

Mbeki eventually fired Jacob Zuma as his vice-president due to allegations of corrupt dealings he was involved in with the businessman Shabir Sheikh. Jacob Zuma managed to capitalize on the growing discontent under the Mbeki administration and began to blame Mbeki directly for government failures instead of the ANC (Bassett & Clarke, 2008). Ultimately, Jacob Zuma ended up becoming the head of the ANC after winning the leadership battle at Polokwane in 2007. He had successfully painted himself as a victim of a witch-hunt by the pragmatist faction of the ANC, and a court judgement in 2008 lent credence to this narrative. Zuma was also supported by ANC Youth League leader at the time, Julius Malema. Not long after his defeat, Mbeki was asked to resign as president and in 2009 Jacob Zuma became president of South Africa (Bassett & Clarke, 2008).

Under Zuma, the ANC’s long-standing policy of cadre deployment was used to appoint Zuma allies into leadership positions in various state-owned enterprises (Roux, 2020). Under this arrangement, industrial scale looting of South Africa’s state-owned enterprises began which involved kickbacks, tender fraud, siphoning off money into offshore accounts among other things (Roux, 2020). Central to this was Zuma’s relationship with the Gupta family who featured prominently in corrupt dealings at the time. The Gupta family used their wealth and power to influence Zuma to appoint ministers and officials that would be favourable to their ends. Essentially, South African state institutions and enterprises were increasingly being used as vehicles for corruption and largescale looting. Constitutional institutions that were meant to prevent this from happening were severely undermined by dodgy appointments, most notably the National Prosecuting Authority, which has the power to institute criminal proceedings on behalf of the state (Roux, 2020).

The beginning of the end for Zuma was when the Public Protector, Thuli Madonsela, produced a report detailing how he had used public funds to upgrade his homestead in Nkandla, Kwa-Zulu Natal (Roux, 2020). The report set out recommendations to be taken against Zuma (Roux, 2020). After these recommendations were effectively ignored by the Parliament, a group of political parties led by the EFF sought to get the Constitutional Court, the highest court in South Africa, to declare that both the President

and Parliament had breached their Constitutional obligations (Roux, 2020). The Constitutional Court condemned the President's behaviour and ordered that he pay back the money that was spent on the unauthorized upgrades at Nkandla (Roux, 2020).

The Court's findings against Zuma turned public opinion swiftly against the ANC which reflected in their relatively poor performance in the 2016 Municipal Elections (Roux, 2020). Due to a significant decrease in votes (53.9% of the overall vote; its lowest percentage yet) and the formation of governing coalitions by opposition parties which were determined to keep the ANC from retaining power, the ANC lost control of major municipalities in South Africa namely, Nelson Mandela Bay, Johannesburg and Tshwane (Kepe & Hall, 2018). These losses were largely perceived by some within the ANC as an indictment against Zuma whose popularity had plummeted as a result of his associations with the ongoing State Capture scandal in South Africa. The EFF made significant gains in previously ANC dominated areas; signalling to the ANC that they were bleeding support to the EFF who had positioned themselves as revolutionary vanguards in opposition to a complacent and captured ANC.

#### 4.1.2. Julius Malema and the EFF

Another important populist voice in post-apartheid South African politics is Julius Sello Malema. Julius Malema joined the ANC at the age of 9. He began to gain prominence as a divisive young politician when he was elected president of the ANC Youth League in April 2008. Before that, in 1995, he was elected both chairperson and regional chairperson of the Seshego branch of the ANC Youth League in Limpopo, and in 2011 was elected national president of the Congress of South African Students (Akinola, Oluwaseun, & Tolulope, 2015). Very early on in his political career, he began to portray himself as the "champion of the poor, a radical voice for the nationalisation of mines and the seizure of white-owned land" (Akinola, Oluwaseun, & Tolulope, 2015, p. 106). During his time as ANC Youth League leader, he has said of his position on land nationalization that, "nationalization will never change. Expropriation without compensation will never change. Whether you expel us or don't expel us, these resolutions will never change" (Akinola, Oluwaseun, & Tolulope, 2015, p. 106). In addition to this, he has argued that white people should be treated as criminals for stealing land from black people. At the EFF's party launch at Marikana, in part of his speech aimed at whites, Malema stated, "to get rid of the curse you must give back the land. You are in possession of stolen property," (Nicholson, 2013). In 2011, Malema made a statement during a political march, which was named the "Great March for Economic Freedom", whereby he made the following statement: "We come here as Economic Freedom Fighters carrying the burden of the millions of the economically excluded subjugated, oppressed, exploited and

depressed South Africans in the Economic Freedom Mass Action under the leadership of the ANC Youth league” (Shivambu & Smith, 2014, p.33).

Malema, as president of the ANC Youth league, threw his support behind Zuma during his election bid in 2009 vowing that the youth of South Africa would be willing to die in supporting him. At a Free State rally, Malema said told the crowd that, “we are prepared to die for Zuma. We are prepared to take up arms and kill for Zuma” (“We will kill for Zuma,” 2008). Their relationship would not remain on good terms for long. After a series of conflicts with the ANC, and particularly Zuma, Malema was eventually expelled from the ANC for 5 years after a disciplinary hearing concluded that he had brought the party into disrepute. As youth leader he was known for his fiery rhetoric and his invective aimed mostly at whites. He was told repeatedly by the ANC to stop singing the struggle song “Shoot the Boer” after it was ruled “hate speech” by the high court. The final straw, which led to his disciplinary hearing, was when he suggested that there should be a regime change in Botswana (Smith, 2011). Malema was also an avid supporter of former Zimbabwean President Robert Mugabe and his controversial land policies. In 2017 at an Africa Day speech he said, “Of course we don’t want leaders who overstay their welcome but Mugabe is 100% right about land” (Monama, 2017).

Julius Malema has called for land occupations numerous times in the past (Daniel, 2018). At a 2018 rally at the Thembalethu Stadium in George, Malema urged his supporters to occupy land by saying the following: “When we say to the people of South Africa occupy land, we don’t say do illegal things. It is your right to have land. I can’t go say occupy your house, it belongs to you. You must continue to occupy the land it is yours. Majority of black people where they stay it was an illegal occupation. You see Soweto, they occupied it by force. Today it is the biggest township in Africa. You must continue to occupy by force. We are saying to the people in power we are serious about land” (Saal, 2018). A couple of days before that, he was in the Bloemfontein Magistrate’s court for an earlier incident whereby he incited his supporters to occupy land (Saal, 2018).

Malema appears to hold a majoritarian view on politics, which means that he thinks the will of the majority is ultimately what should prevail. He once told his supporters at the Tshwane University of Technology that, “Workers everywhere are in majority, the youth of South Africa are in majority, acting against the youth and the workers you are acting against the people who brought down the apartheid regime... they too can bring you down” (Vincent, 2011). When Zuma was embroiled in corruption charges, Malema jumped to the defence of Zuma saying, “If he is so corrupt and he must be punished, let the voters do that. Why do you want to subject him to the hands of the few, the judiciary, the judges and the media? Leave it to the voters, 23 million must decide whether Zuma becomes president or not, not the judges” (Vincent, 2011, p. 5). These statements provide insight into how Malema views the institutions

that are a cornerstone of the Constitutional democracy negotiated for in 1994. In addition to this, Malema has made comments which suggest that he does not view the state and party as separate. At a speech in Thabu Nchu to celebrate Youth Day he said, “When Zuma is president are you going to say in court “state versus state? He will be the state himself” (Vincent, 2011, p.5)

Malema appeared to be finding a surprise ally, given how their relationship deteriorated after he left the ANC Youth League, in the form of Jacob Zuma who stated in 2017 that the “Black parties in Parliament should join together” on the land issue (Grootes, 2017). This statement is characteristic of Zuma as it seeks to frame the land issue as a racial issue. The “black people” should join together to resolve the land issue, implying that white people have no real interest in resolving the land issue too; or may have views on the land issue that overlap with blacks. It should also be noted that Zuma’s calls for land expropriation without compensation came towards the end of his tenure as president. During the prior six years of his presidency he had been rather silent on the issue. According to Stephen Grootes, the ANC had no real plan regarding land reform heading into the 2017 ANC elective conference.

After his expulsion from the party, Malema went on to form the EFF in 2013 together with other breakaway members of the ANC Youth League. They would later merge with like-minded political movements which include September National Imbizo (SNI), a movement headed by Andile Mngxitama with an ideology that can be described as “black consciousness, pan-Africanist” (Mbete, 2015). In the 2014 General Election, the first election contested by the EFF, it won 6.35% of the national vote; making it the third largest party in South Africa (Roux, 2020). This was the largest percentage of votes that any new political party had ever won in South Africa (Roux, 2020). It managed to increase its share of the national vote to 10.79% in the 2019 General Election and became the official opposition in two provinces: Limpopo with 14.43% of the vote and North West with 18.36% (Roux, 2020).

The EFF argues that its principles are based on the Freedom Charter. The Freedom Charter is a document drawn up in 1955 which set out a vision for a South Africa where all South Africans, regardless of race, would share in the country’s wealth. The ANC takes its inspiration from the Freedom Charter, but the EFF argue that they have betrayed its principles (Mbete, 2015). The EFF’s founding manifesto explains that its commitment to socialism is borne out of its appreciation “of the role played by the fathers and mothers of South Africa’s liberation movement” (Economic Freedom Fighters, 2013a). It also says that the party draws inspiration from a “radical, working class interpretation of the Freedom Charter” (Economic Freedom Fighters, 2013). By stressing this interpretation of the Freedom Charter, the EFF contrasts itself with the ANC by suggesting that the ANC interpretation of the Freedom Charter is conservative and elitist (Mbete, 2015). Furthermore, the EFF identify themselves as being the current generation of revolutionary freedom fighters following a long line of struggle leaders of the past such as

Nelson Mandela, Robert Sobukwe and Steve Biko. The Nelson Mandela they often put emphasis on is not the Mandela of reconciliation after his release from prison, but rather the radical Mandela who they remember as “a fighter, the robust defender of the ANC Youth League’s Africanist views, the volunteer-in-chief of the Defiance Campaign and the gun-carrying commander-in-chief of Umkhonto weSizwe (MK)” (Nieftagodien, 2015).

The EFF have long characterised themselves as a vanguard of the working class, standing up for the marginalized black and poor working class against the twin evils of white monopoly capital and the newly enriched ANC elite. The EFF’s National Assembly Policy Document makes clear their commitment to pan-Africanism:

“[It is] regrettable to discard an Africanist character as that we will be tantamount to validating a Eurocentric perception against the ability of Africans to articulate own narrative which affirms African solutions to African challenges. An Africanist character of the organization denotes a historical and contemporary post-colonial case for black consciousness as a prerequisite for Africa’s right to self-determination” (Economic Freedom Fighters, 2019),

This Africanist outlook held by the EFF is seen as essential to ensure the economic liberation of black South Africans as illustrated by the following text from their policy document: “radical pan-Africanism and nationalism - a proponent of which is black consciousness - is a prerequisite condition for a thorough-going struggle for economic emancipation of the black majority in general and Africans in particular” (Economic Freedom Fighters, 2019).

According to their Founding Manifesto (2014), the EFF positions itself as the following:

“radical, Left, anti-capitalist and anti-imperialist movement with an internationalist outlook.... The EFF subscribes to the Marxist-Leninist and Fanonian schools of thought on its analysis of the State, imperialism, class and race contradictions in every society. Through organized engagement and constant relationship with the masses, Economic Freedom Fighters provide clear and cogent alternatives to the post-colonial economic systems, which in many countries kept the oppressed people under colonial domination and suppression”.

In addition to this, the Founding Manifesto argues that the African working class make up the core of their constituency due to the fact that they were historically and currently the most exploited group and make up the vast majority of the unemployed in South Africa. They recognize that coloured South Africans (a term used to describe mixed-race South Africans) were also exploited under apartheid and have subsequently been treated with disdain by the ANC, and as a result the EFF will work towards their betterment. However, the EFF policy towards the Indian/Asian working class differs from the first two in that the EFF argue that exploitation of Asians/Indians was not as severe under apartheid and

therefore their inclusion in “black economic empowerment” schemes should be questioned (Duncan, 2014). This view towards the Indian/Asian community reflects the EFF’s essentialist conception of race. The EFF claims that Indians/Asians working class consisted mostly of “peasant traders who own small shops and medium shops and enterprises (Founding Manifesto, 2014). This neglects the fact that the vast majority of Indians arrived in South Africa as indentured labourers who were subject to hyper-exploitation. The merchant traders arrived later and of their own free will; yet the EFF chooses to focus on this class of Indians as representative of all Indians/Asians in South Africa (Duncan, 2014).

The EFF promises to achieve economic emancipation for the poor through a comprehensive programme of “nationalisation of mines, banks and other strategic sectors of the economy” and “expropriation of South Africa’s land without compensation for equal redistribution” (Founding Manifesto, 2014). According to them (Economic Freedom Fighters, 2013), land expropriation without compensation is the only way to rectify the racially skewed ownership of land in South Africa and restore the dignity of the people. They believe that the government should not have to spend any money on land restitution, as they consider that akin to the ANC “buying back stolen land”. Therefore, they reject the willing-buyer, willing-seller model not necessarily because it has failed to transform land ownership, but rather in principle. They have characterized the policy’s failure on the fact that it relies on “land thieves” unwilling to part with their land (Economic Freedom Fighters, 2015).

Land expropriation without compensation is one of the EFF’s “seven non-negotiable cardinal pillars” as stated in its founding Constitution. The EFF has clearly stated in its policy document (2016) that Section 25 needs to be amended because it stipulates that compensation must be decided by a court. In the EFF’s view, courts and laws are not apolitical institutions but rather reflect the control and wishes of the ruling hegemon (white capital). Therefore, expropriation as subject to the rule of law would always favour the interests of the white landowners over the black claimants. Further to this is the belief by the EFF that all land in South Africa belongs to “the natives” and therefore white landowners should not be compensated for land they have stolen (Economic Freedom Fighters, 2016). According to this policy document, the EFF attributes the failure of land reform to the “willing buyer, willing seller” principle adopted by the ANC, referred to as the “Kempton Park Compromise” in the policy document. It also attributes the slow pace of land reform to a “fear of white people” which has paralyzed the ANC and forced them to uphold what it deems the “unnecessary 1994 compromise” (Economic Freedom Fighters, 2016). In some of their policy documents, they use strong, emotive language with very little regard for policy detail. For example, in one of their policy documents from 2014, the EFF states the following:

‘What would happen to the land if expropriated?’ the EFF says, “LAND MUST BE RETURNED BECAUSE IT BELONGS TO BLACK PEOPLE! That’s the first principle. What we would

do with the land is none of the business of the land thieves. We want back because it's ours! That there shall be a new efficient black farming class and that land shall be used productively is secondary question. We want it back even if it's to look at it every morning and cry out loud IZWE LETHU!" (Nicolson, 2014)

Despite the fact that the EFF have portrayed themselves as anti-corruption (Economic Freedom Fighters, 2016), there have been allegations of corruption lodged against party leaders (Du Plessis & Plaut, 2019). During his tenure as ANCYL President, Malema was caught evading millions of Rands in tax for which he would later apologize (Du Plessis & Plaut, 2019). Additionally, a report was released in 2018 which found that senior members of the EFF, including deputy president Floyd Shivambu, were found to have stolen a substantial amount of funds from VBS Mutual Bank, a small, rural bank, which was "used by poor people for their savings and pensions" (Du Plessis & Plaut, 2019, p. 85). It was alleged that Floyd Shivambu had made R10 million from this via his brother, Brian Shivambu. Lastly, there are also reports that the EFF is largely funded by cigarette smugglers, in particular Adriano Mazotti (Du Plessis & Plaut, 2019).

The EFF shows its populism in a number of ways. One of the most visible ways is by the way its members choose to dress in parliament and at other political gatherings. The EFF uniform consists of red overalls and a hardhat, which is sometimes swapped out for a red beret. Female EFF members will often dress in uniforms that are typically worn by domestic workers (or maids) in South Africa. This puts them in sharp contrast to the designer suits that are worn by other parties at official political gatherings. The uniform acts as a message to the black working class of South Africa showing them that the EFF represents them. In addition to the red uniforms, the EFF has a militaristic organizational structure, borrowing from left-wing movements in South America (Mbete, 2015). The leader, Julius Malema, has given himself the title Commander-in-Chief whereas other entities in the party are given names such as "the War Room" and "Student Command".

The EFF's rhetoric has served to re-racialize politics in South Africa. The EFF routinely generalizes entire groups of people, assuming that all members of specific group think and behave the same way. Their view of South Africa is that of a tug-of-war between the race groups over South Africa's economic resources. "Whites" are cast as the enemy of transformation, who stubbornly cling onto their ill-gotten resources and perpetuate white supremacy. They stand in opposition to the "Africans", who the EFF claim to represent. The "Africans", are commonly referred to as "our people" by the EFF; with the not-so-subtle implication that white South Africans do not belong to this people and are not represented at all by the EFF. It is worth noting that the EFF does not take an oppositional stance towards only whites. Indians are not spared the EFF's racial invective either (Wicks, 2018). These statements, among others, appear to emphasize the "non-africaness" of whites.

Using Moffitt and Torney's populism framework, the "people", in the case of the EFF, refers to the black African people of South Africa. They are portrayed as the working class masses who are powerless and stand in opposition to the white elite or "white monopoly capital", who they claim maintain a monopoly on capital, and some elements of the ANC political elite who they view as newly advantaged and out of touch with the needs of ordinary black South Africans (Mbetse, 2015). According to the EFF narrative, black South Africans continue to be exploited post-1994 by a white capitalist elite that has refused to relinquish control of the economy. White control of the economy is enabled by the ANC who instead of being committed to real reform has merely sold out the working-class blacks to enjoy a share in the wealth of the whites (Mbetse, 2015). As mentioned previously, one of the ways in which the EFF identify with "the people" is through their choice of clothing. In parliament, EFF MPs will often wear red berets and worker uniforms, from miners to domestic workers. This creates a strong contrast, visually, between them and the other parties in parliament which tend to wear suits and follow the more Western style of dress. The EFF choice of clothing reflects, and shows, a "direct identification with the working class" (Mbetse, 2015). Additionally, when the EFF first started wearing their distinctive clothing in parliament, the ANC stated that they were going to use their majority in parliament to try and change the rules in order to prevent them from doing so. Through various committee meetings set up to discuss parliamentary rules of such a kind, the EFF have done everything in their power to resist the change to clothing rules. This allowed them to generate much-desired publicity, but also to generate a sense of victimization which populist parties commonly rely on.

The second element of Moffitt and Torney's framework, "crisis, breakdown and threat" has also been effectively used by the EFF to gain support. The EFF launched itself in Marikana in October 2013, the site of the mass killing of 34 striking mineworkers by police in August 2012. This is after Malema had made frequent visits to the site in the months running up to the party's formation (Mbetse, 2015). The EFF maintains that the Marikana Massacre (as it is commonly referred) is indicative of the ANC's neglect of the working class in favour of the interests of white capital. Mbetse (2015) points out that the massacre is the first of its kind in democratic South Africa and will be a source of shame for the ANC in government for many years to come. At the time of the massacre, Cyril Ramaphosa was a non-executive director of Lonmin, the mining company which owned the Marikana mine. His company, Shanduka, was also a minority shareholder in Lonmin ("Cyril Ramaphosa," 2019). He was accused of betraying the workers by the EFF when emails emerged that he had called for strong action against the miners ("Cyril Ramaphosa," 2019). Julius Malema was quoted as saying "every mine has a politician inside. They [whites] give them money every month, they call it shares. But it is a protection fee to protect whites against the workers" ("Cyril Ramaphosa," 2019).

By launching its party at Marikana, the EFF sent a clear message that it will be a revolutionary alternative to the elite-captured ANC and serve to represent the interests of the black working class (Mbete, 2015). Their 2014 Election Manifesto also highlighted their commitment to serving as the revolutionary vanguard of black South Africans. In it, Malema makes use of the word “black” on 11 occasions. Additionally, in line with their populist approach, the manifesto states that the EFF “is an organization and movement for all the people of South Africa. It is an organization for and of the people” (Economic Freedom Fighters, 2014). This is typical of the populist self-conception as working for and behalf of the people in opposition to a perceived enemy; in this case, white capitalists and the ANC.

The EFF’s populist political style was evident during its 2014 National Election campaign. The party took part in a number of service delivery protests around the country, including at Marikana where there were ongoing tensions; marching alongside protestors and addressing them (Mbete, 2015). This willingness to immerse itself in organic expressions of anger by poor working-class South Africans helped solidify its image as a party for “the people”. At some protests, Malema would urge protestors to continue protesting against the government until they got exactly what they wanted, seeking simple solutions for complex issues (Mbete, 2015).

Two notable cases of this are protests that took place in Relela in January 2014 and Bekkersdal in April. In Relela, protests against poor policing turned violent. Malema promised that the community would receive legal assistance from the EFF and urged them to vote for them if they wanted a better life (Mbete, 2015). In Bekkersdal, in the run up to the 2014 election, there had been persistent protests by the community calling for the disbandment of the municipality. Protestors cited mismanagement of funds and corruption as reasons why this disbandment should take place (Mbete, 2015). Similar to its strategy with Marikana and the founding of the party, the EFF used Bekkersdal as the site for the Gauteng launch of the party’s election manifesto (Mbete, 2015). In addition to this, they supported the occupation of land belonging to the Rand Uranium mining company and encouraged “protestors to continue fighting for ‘water, electricity and housing’” (Lekgowa & Simelane, 2013 in Mbete, 2015).

The EFF have adopted a disruptive approach to parliament, which has generated them significant media coverage. They have repeatedly walked out of parliament in protest and on one notable occasion in 2015, they were removed from parliament forcibly by security agents after continually interrupting the president’s State of the Nation Address. Another way of disrupting parliament is by continually bringing up “points of order”, in many cases on petty parliamentary procedural matters. This has the effect of disrupting the flow of parliament and drawing attention to themselves. Despite numerous attempts to change the rules to prevent such disruption, the EFF have continued in this manner, as was in the case in

2016 when the EFF marched out of parliament chanting “Zuptas must fall”, a reference to the controversial relationship between Zuma and the Gupta family ("Zuptas must fall," 2016).

The EFF have managed to put significant pressure on the ANC in regards to land by tabling several motions to expropriation land without compensation, forcing the ANC to reject the motions and allowing the EFF to expose the ANC as “weak” on the land issue (Muller & Kotzur, 2019).

According to Kepe and Hall (2018, p. 129), both the ANC and the EFF have “contracted complex debates about land into short slogans, with minimal if any details, and have shown little interest in who gets the land, what rights they have and how they use it”. The EFF has hardly seen fit to engage with the detail of land reform policy of implementation. Instead, it has ramped up the political discourse around land – as symbol, as identity and as citizenship (Umraw, 2018). The EFF have managed to claim the land issue as their own, campaigning for years on “return of the stolen land” as their defining principle. Their successful campaigning on the land issue, which includes social media activism and emotive speeches, has managed to reshape the debate on this issue.

### **How did the EFF emerge to the left of the ANC?**

According to Noor Nieftagodien (2015), the EFF managed to rise on the back of youth dissatisfaction and rebellion in the face of neoliberal capitalism. Nieftagodien situates the rise of the EFF as part of a general trend of youthful rebellions that emerged in the wake of the 2008 economic crisis. The economic crisis resulted in structural long-term unemployment that persists among young people to this day. Faced with these challenges and feeling increasingly marginalized, young people organized protests against “austerity politics and undemocratic regimes”; the most significant the 2011 Arab spring. (Nieftagodien, 2015, p. 450). In the United States, young people started the 2011 Occupy Wall Street movement which protested corporate greed and corruption. In Spain indignados (outraged citizens) took to the streets to protest; as did young people in Greece and Chile.

Nieftagodien argues that the government’s commitment to a neoliberal economic framework which includes a restrictive fiscal policy, export-led growth and prioritization of big business has resulted in persistent high-levels of inequality, high youth unemployment and a lack of economic growth. Young black South Africans, particularly those living in townships and villages have been the most negatively affected by these conditions (Nieftagodien, 2015). Unemployment among this demographic is estimated at 40 to 50 percent. Because of this, young people have been active in protest movements in South Africa, especially with regards to service delivery protests.

According to Nieftagodien (2015), the EFF, with its aspiration of “economic freedom” is an attractive force to these disaffected young people. Young people feature in large numbers at EFF rallies, wearing the signature red overalls and proclaiming their support for the EFF’s political program. The EFF has provided a vehicle for young people to express their anger and frustration with the status quo; and provides a political basis for it. Nieftagodien argues that the “EFF is more than just a lightning rod for disaffection about dire socioeconomic conditions. It is arguably the most significant youth movement in the country since the early 1990s (Nieftagodien, 2015, p. 450). The EFF’s political style appeals to many young people with its radical language, energetic meetings and willingness to confront authority figures head on. Nieftagodien states that the EFF freed activists who were associated with the ANCYL to better express themselves and not fear the discipline of the ANC.

The EFF took great strides to present itself as the “underdog” which was able to deliver on promises that the ANC could not (Robinson, 2014). As previously mentioned, the party was able to compromise itself of leaders from various backgrounds including activists and smaller parties. It also managed to receive support from the National Congress of Trade Unions, which helped solidify its image as a party that represents the economic needs of poor, working-class South Africans (Robinson, 2014).

The EFF, shortly after it was founded, consistently criticized then President Zuma, particularly for the Nkandla Scandal, where Zuma used public funds to pay for upgrades in his home and his relationship with the Gupta family (Mbete, 2016). EFF Members of Parliament would chant “Pay back the money” during the president’s State of the Nation Address. This continuous attack on former president Zuma, who represented the status quo at the time, is typical of populist parties which seek to challenge the status quo.

#### 4.1.3. ANC Factionalism

The 2019 General Election marked another point in the long decline of ANC’s electoral support. In the 2004 General Election, the ANC won 69% of the votes. This dropped to 65% in 2009 and 62% in 2014. In the 2019 election, they only managed to win 57% of the vote, its worst result in the general election ever (Mahr, 2016). Municipal elections have mirrored this decline. In 2006 the ANC won 65% of the votes, this decreased to 62% in 2011 and 54% in 2016. Clearly, the ANC has sustained a continued withering away of its support.

As previously mentioned, the 2016 Municipal elections results did not bode well for the ANC. They had lost a significant amount of their support and suffered their worst electoral outcome since 1994. The decline of support was largely attributed to the corruption scandals surrounding Zuma (Everatt,

2017). The ANC lost a significant number of voters to the EFF, who received 8.19% of the votes making them the third largest party on the municipal level. These elections would mark a turning point with regard to Zuma's rhetoric on land expropriation without compensation.

The ANC, and Zuma in particular, entered 2017 with its "proverbial back to the wall, and its clarion call, from the State of the Nation address onwards, was a promise of 'radical economic transformation'" (Kepe & Hall, 2018). Zuma described 2017 as the year of "taking the land back to the people" (Peyper, 2017). This adoption of radical economic transformation was seen as necessary to succeed in the ongoing struggle against "white monopoly capital", a term made popular by the ANC and its left-wing allies, including the EFF and Black First Land First. However, it was later discovered, through a series of leaked emails, that this term in fact originated in an office in London as part of Bell Pottinger's, a now defunct public relations, reputation management and marketing company, public relations campaign paid for by the Guptas (Kepe & Hall, 2018).

Another shift in policy occurred in 2017 when Zuma made a sudden announcement that the first year of tertiary education would be tuition-free, a position that had long been held by the EFF (Economic Freedom Fighters, 2014). This was in response to the Fees Must Fall protests which had been gaining momentum and had been calling for free tertiary education. His announcement surprised the Treasury, as there had been no discussions about how this would be funded, indicating that this decision originated from Zuma himself and unilateral. Universities South Africa, an organization that represents universities, were upset with the announcement because they had not been consulted beforehand. The announcement by Zuma contradicts the findings of the commission of inquiry report, headed by former judge Jonathan Heher, which found that tuition-free tertiary education would put enormous strain on the country's fiscus (Masweneng, 2017).

The run up to the 2017 ANC Elective conference involved a protracted and heated battle between two opposing factions. On the one side was the Ramaphosa faction and on the other the Zuma faction led by Nkosazana Dlamini-Zuma, the ex-wife of Jacob Zuma (who could not run again due to term limits). Ramaphosa campaigned on the promise to implement his "New Deal" economic plan which promised to speed up land reform but fell short of indicating this would include land expropriation without compensation. Nkosazana Dlamini-Zuma, an African nationalist who has the support of the influential ANC youth and women's leagues, campaigned on the slogan of "radical economic transformation" with the promise to make expropriation without compensation official state policy (Mzwakali, 2018; Winning, 2017).

The Ramaphosa faction narrowly beat the Zuma faction and Ramaphosa became president of the ANC. According to the Daily Maverick, the only reason Ramaphosa ended up winning is because a Zuma ally changed sides at the last moment (Merten, 2017c). The resolutions that were adopted at the conference included a number of populist proposals such as land expropriation without compensation, nationalising the South African Reserve Bank and a commitment to providing higher education tuition-free. The adoption of land expropriation without compensation was a win for Dlamini-Zuma, who threw her weight behind the proposal (Mzwakali, 2018). The push for land expropriation without compensation came mostly from Kwa-Zulu Natal delegates, many of whom had pledged their support for her (Merten, 2017c).

Because of Ramaphosa's narrow victory, many members of the Zuma faction managed to retain, and in some cases gain high ranking positions in the ANC. 3 of the top 6 positions in the National Executive Committee, the highest decision-making body within the ANC, were filled by members of the Zuma faction: David Mabuza (vice president), Ace Magashule (secretary general) and Jessie Duarte (Deputy Secretary General) (Roux, 2020). According to Theunis Roux, the Zuma faction, despite their loss, has reorganized itself into the Radical Economic Transformation (RET) faction whose policies are not very different to those put forward by the EFF. Both groupings use terms such as "radical economic transformation" and "white monopoly capital" to justify their proposals (Roux, 2020).

Since Zuma has stepped down as president, the radical economic transformation faction of the ANC has put forward a number of proposals, such as land expropriation without compensation, to be adopted by the National Executive Committee of the ANC, many of which are hard to distinguish from those that the EFF have been advocating for a long time (Roux, 2020). This overlap with EFF policies has allowed the radical economic transformation faction, in their efforts to regain control over the ANC, to use some of their proposals as a political wedge in the ANC. The strategy is outlined by Roux (2020) as follows: the RET faction introduces proposals that Ramaphosa can either accept or reject. If he rejects them; then he stands to receive the blame if the ANC loses any more support to the EFF. If he accepts them, then the RET faction benefits from the ANC moving towards their own ideological position (Roux, 2020).

According to Steven Friedman, a prominent academic and public intellectual, the ANC's promise to implement radical economic transformation is not a genuine attempt to speed up economic change and solve the genuine issues facing South Africa, but instead is intended to be used a patronage tool in order to "justify their continued quest – in partnership with their private allies – to control public resources" (Friedman, 2017). According to Jacques Pauw, author of *The President's Keeper* which details Zuma's corruption, the Dlamini-Zuma campaign was financed in part by Adriano Mazzoti, a cigarette smuggler

heavily implicated in corruption. He admitted in 2014 that his company, Carnilinx was complicit in fraud, money laundering and tax fraud. Despite knowledge of this, Dlamini-Zuma chose to still accept campaign donations from him (Pauw, 2017).

Gwede Mantashe, who was secretary-general of the ANC in 2017, said that policy shifts taking place within the ANC in regard to land expropriation without compensation were prompted by panic at the ANC's loss of support to the EFF in the 2016 Municipal Elections. "When there is factionalism and populism people tend to go to extremes. We all agree here we need to accelerate land redistribution. But when you say you must expropriate without compensation, what do you mean, in essence?" (George & Mvumvu, 2017).

## 5. Discussion

The motion to amend section 25 of South Africa's Constitution to allow for land expropriation without compensation appears to be a distraction from the real issues facing land reform. The background section of this thesis illustrated what those issues are. Land reform has been unsuccessful due to several reasons none of which have to do with section 25 of the Constitution. The background section corroborated this by highlighting expert opinion on section 25, demonstrating that most scholars agree that it does not prohibit effective land reform from taking place. What is clearly evident is that the ANC has not made land reform a priority. This is evident by the miniscule budget that has been allocated towards it over the years, barely surpassing 1% and the fact that the ANC, 25 years after coming to power, has still not managed to pass an Expropriation Bill which would bring the government's expropriation powers in line with the scope provided for it in the Constitution. Instead, the government has continued to abide by the willing-buyer, willing-seller model and the few expropriations it does undertake follow apartheid-era legislation, the Expropriation Act of 1975. Additionally, the background section shows clearly that many eminent scholars on the issue of land reform and the Constitution view the section 25 as enabling of land reform in South Africa and not prohibitive. The ANC and EFF notion that section 25 needs to be amended in order to amend the Constitution stands in opposition to this view. Despite the overwhelming view among scholars that section 25 of the Constitution does not prohibit effective land reform, the ANC has supported amending the Constitution anyway. This is more evidence that the push to amend the Constitution is not grounded in an earnest desire to remedy the problems associated with land reform.

The background section also shows clearly how the ANC had long been opposed to amending the Constitution to allow for expropriation without compensation and instead advocated for use of

expropriation within the confines of the Constitution as it presently stands. Senior members of the ANC had stated many times that the problem of slow land reform did not lie with the Constitution and in some cases praised the Constitution as a solid mandate to carry it out. In fact, the ANC has never tested whether land expropriation without compensation is even possible within the current wording of section 25, which shows that it has never been something they have desired to do. The ANC's opposition to amending the Constitution was most vividly expressed when in February 2017 it rejected the EFF's offer of their 6% of seats in parliament to amend the Constitution, as the ANC narrowly fell short of the two-thirds majority needed to pass an amendment. After this rejection, senior ANC leaders emphatically stated that the ANC was opposed to amending the Constitution and that they would not be told by the EFF what to do on the land question.

However, despite the ANC rejecting the EFF, Zuma did not and chastised the ANC parliamentary caucus for not voting with the EFF, lamenting the fact that the "black parties" did not unite over the issue. The reason for Zuma's support for the EFF is because he was fresh off the back of a bad election result in the 2016 Municipal elections and saw the opportunity to win favour with his critics and win back some support from the EFF.

After the 2016 Municipal elections, when the ANC achieved its worst electoral outcome since 1994, it was clear to the ANC that they were bleeding support to the EFF. The EFF had managed successfully, in a populist fashion, to portray itself as the true revolutionary party of SA and the ANC as corrupt, out-of-touch elites hostile to the interests of the poor. The EFF have managed to use typical populist tactics to grow their support which fit neatly into Moffit and Tormey framework of populism as performance. Their documents and speeches consistently attempt to "appeal to the people" by invoking the idea of the working-class black masses in opposition to the white elite. They deliberately ignore the conventional way of doing politics, by wearing clothing that set them aside from typical parliamentary dress and disrupting the work of parliament, in other words they exhibit "bad manners" (Moffit & Tormey, 2014). Lastly, they make full use of the crises that South Africa faces to gain bolster their support; for example, capitalizing on the Marikana massacre, the slow pace of change in South Africa and on the mounting opposition towards Zuma. In other words, they make full use of "crisis, breakdown and threat" (Moffit & Tormey, 2014).

They have also expressed typical populist views which suggest that the will of the people should reign supreme, even over democratic institutions. Their policy statements and speech are full of emotive rhetoric invoking the people in opposition to corrupt elites, fitting into Mudde's (2004) framework of the two core elements present in populist parties: a clash between "pure people" (the black working class) and the "corrupt elites" (the ANC and white monopoly capital), and the belief that the driving force of politics

should be the will of the people. Additionally, Torodov's (2012) argument that populists attempt to provide solutions to grievances that are too simplistic and fail to consider the complexity of the problem fits describes the EFF's approach to land. The EFF's policy documents tend to be emotive, using revolutionary language and slogans. They are also filled with racial language, seeking to portray the land issue as a contest between blacks and whites. The EFF's policy documents and statements do not engage with the complexity and nuance of the land debate, but instead give off the impression that the problems with land reform can be dealt with in one fell swoop: nationalization.

The economic conditions within South Africa enabled populism to take hold in the way that it did. Referring to the research done by Acemoglu, Egorov and Sonin (2013), where they found that populism tends to develop in societies where elected officials have been co-opted by elites or exhibit a right-wing bias in policy, it can be argued that conditions in South Africa fit. Zuma's involvement with state capture is an example of being co-opted by elites. The EFF managed to exploit dissatisfaction around this successfully as was evident by their success in the 2016 Municipal elections. They also managed to exploit fears that the ANC was exhibiting a right-wing bias in policy, by portraying them as weak on land and having betrayed their original left-wing revolutionary principles. In doing this, the EFF successfully situated themselves to the left of the ANC and set the agenda on land. Additionally, the work by Luiz (2015) on middle-income traps can be helpful to understand why South Africa has been fertile ground for populism. South Africa experienced a relatively decent economic growth rate before a sudden drop off during the 2008 financial crisis and has never been able to return to those levels, growing at a meagre rate under Zuma. This economic malaise, which has taken its toll on South Africa's poor has made the country ripe for populist leaders.

Surveys and research on the 2016 election showed how Zuma's corruption scandals were central to the ANC's loss of support. As has previously been mentioned, what had long been a position of the EFF, that land should be expropriated without compensation, began to be uttered by Zuma after the 2016 municipal elections and during the lead up to the ANC elective conference in 2017. The 2016 Municipal elections were a pivotal moment in this shift of rhetoric towards land expropriation without compensation. Zuma not only started pushing the EFF position on land, but he also suddenly started calling for free tertiary education, despite a government report concluding that this was unaffordable. It appears that Zuma was attempting to co-opt EFF positions in order to bolster his popularity ahead of the 2017 ANC elective conference.

In the run up to the 2017 elective conference, the ANC was split down the middle into two factions. The Zuma, or "radical economic transformation," faction consisted of supporters of Zuma who were implicated in state capture and had an interest in maintaining control of the ANC and by extension

control of the country's institutions. Presumably, the radical economic transformation faction thought that Dlamini-Zuma's tenure as president would shield them from prosecution by the National Prosecuting Authority which would then be under Dlamini-Zuma's control. In characteristically Zuma fashion, this faction ran on a number of populist proposals similar to those of the EFF including land expropriation without compensation. Both the radical economic transformation faction and the EFF used the rhetoric of 'black economic empowerment' in opposition to 'white monopoly capital'.

Ultimately, Ramaphosa's faction narrowly won the race but, due to this narrow win which meant that many in the Zuma faction maintained their grip on the ANC, land expropriation without compensation was adopted as official ANC policy. The Ramaphosa faction decided to accept it as official ANC policy in order to appease the Zuma faction, many of whom were elected into high positions in the party. The Zuma faction saw land expropriation as a political wedge, forcing Ramaphosa to either accept it or reject it. Accepting it would shift the ANC in the direction of the populist Zuma faction, which they would stand to benefit from, and rejecting it would've allowed the Zuma faction to blame Ramaphosa for any further electoral losses to the EFF. Therefore, it was a win-win bargain by the Zuma faction. Ramaphosa, who was not a supporter of land expropriation without compensation, had to now grapple with it as president of South Africa.

The ANC, knowing that there was an election coming up in 2019, chose to support the subsequent EFF motion to amend the Constitution in 2018. This sudden support of the motion, which they had rejected a year earlier, reflects the change of position the ANC underwent in only a year. Reeling from the 2016 Municipal election results and fearing they would lose more support to the EFF, the ANC attempted to pull the ground out from under the EFF's feet by moving ahead with land expropriation without compensation and attempting to render them neutered on the issue. Bringing in Meguid, Adams and Somer-Topcu's research on political party competition can help illuminate this shift. According to Adams and Somer-Topcu (2009), mainstream parties tend to change their position on an issue if a new challenger has entered the political arena and shares a similar ideological outlook. The ANC in this case is the mainstream party and the EFF the challenger. This effect is most prominent after losses in an election. Meguid argues that parties either take an adversarial approach or accommodative approach to challenger parties, and the ANC clearly adopted the accommodative approach by moving towards the challenger's (EFF) position in order to recapture votes lost.

More than two years after the motion to amend section 25 was adopted by parliament, no amendment has yet been made. After lengthy public hearings and much back-and-forth on the matter (Merten), the ANC's position landed on amending the Constitution to make explicit that which was implicit (in the form of Constitution 18<sup>th</sup> Amendment Bill), which meant that the Constitution was going

to be amended to make it explicit that compensation could be nil, implying that this is already the case. Because compensation needs to adhere to a law of generation application, the ANC is now in the process of trying to pass another Expropriation Bill that would give effect to this. Currently, the Bill is before the National Economic Development and Labour Council for consultations. The bill in consultation is a tweaked version of the draft bill that was introduced in 2008, as mentioned in the background section. After the consultations have finished, the bill will go to cabinet for approval and then parliament. Only then will the parliamentary law-making process begin which on average takes roughly about 2 years. Given the ANC's track record when it comes to movement on land reform and elections, the ANC will most likely attempt to drag the process out at least until the 2021 Municipal elections, knowing full well that it can prove to be an effective electioneering tool (Merten, 2020).

## 6. Conclusion

Land reform in South Africa is still beset with challenges. The government has fallen far short of its stated targets on transferring land from the commercial farming sector to black South African when it took over in 1994. The reasons for this are numerous and hotly debated. They include corruption, poor/unsuitable policy, lack of institutional capacity, lack of political will and, more generally, a misguided focus towards commercial farming instead of smallholders. The government's use of the willing-buyer, willing-seller model has also been the target of criticism for the slow pace of land reform.

The ANC has dragged its feet on addressing the issues with land reform. This is most evident in its inability to pass an expropriation bill, which would allow it to make full use of the expropriation powers permitted under section 25 of the Constitution. Instead, the government's expropriation powers are currently governed by an Expropriation Law passed by the apartheid government in 1975. After many resolutions and promises to move away from the willing-buyer, willing-seller model, the government has yet to do so.

Patience with the ANC was beginning to run out which reflected in their declining electoral support over the years. The EFF had emerged as a challenger to their left and managed to capture some of the ANC's support by presenting themselves using populist tactics to appeal to disaffected South Africans. They successfully managed to portray themselves as the true vanguard of the revolution, contrasting themselves with an ANC that they claimed was corrupt and had betrayed them. This narrative, which was based on populist notions of the people versus a corrupt elite, proved to be relatively successful as was evident by the 2016 Municipal election results.

The 2016 Municipal elections were a pivotal moment in the ANC's shift of position on land reform. Before 2016, the ANC in general and Zuma in particular had been opposed to amending the Constitution. After the poor election results, Zuma's stance shifted and was now calling for the Constitution to be amended to allow for land expropriation without compensation. Zuma, seeing the populist appeal of land expropriation without compensation, decided to seize upon it and his rhetoric on the matter shifted shortly after the results of the 2016 election came out. In 2017, rhetoric on land expropriation was ramped up significantly as the ANC was heading into a leadership election. This movement towards the populist position on land was in line with Zuma's general tendency towards populism, as was abundantly clear in his 2009 election campaign.

Intertwined with all of this was ANC factionalism. The elective conference in 2017 left the ANC split between the Zuma and Ramaphosa factions. Land expropriation without compensation acted as a political wedge and put Ramaphosa in a difficult position. Adopt the policy, and the Zuma faction get what they want and the ANC veers away from Ramaphosa's moderate economic principles. Reject it, and Ramaphosa opens himself up to blame if the ANC lose further support to the EFF. Ultimately, the Zuma faction prevailed and land expropriation without compensation became official policy.

Amidst all the talk of land expropriation without compensation, the ANC has shown very little engagement with the actual issues facing land reform. Despite the High-Level Panel report findings indicating that the problems with land reform are unrelated to section 25 of the Constitution, the ANC has decided to amend it anyway. In doing this, The ANC has decided to mimic the populism of the EFF on the land issue, realizing its powerful electioneering potential. Therefore, despite knowing that the proposal was damaging investor confidence in the economy, in a bid to stem the losses to the EFF, the ANC chose to go ahead with amending the Constitution.

South Africa needs to tread carefully going forward with land reform. If land reform continues at its current pace, the country risks an outbreak of mass violence and destabilization. If South Africa moves forward in a reckless manner to try and appease the populist voices without due consideration for the law and procedural requirements, it runs the risk of destabilizing the economy similar to what happened in Zimbabwe after its fast-track land reform programme in 2000.

South Africa needs to implement sensible policy that will speed up the process of land reform without destabilizing the economy. Populism, with its appeal to emotion and quick-fix solutions, threatens to undermine South Africa's ability to do so. The populist current that has emerged in recent years in South Africa has made it difficult to have a healthy and rational debate on land reform. The call by populists to amend the Constitution to allow for expropriation without compensation was

mainstreamed when Ramaphosa declared that it would be official government policy. Despite the fact that experts on the issue have long argued that the Constitution is not a barrier to land reform, South Africa is now embarking upon the painful exercise of amending it. The policy uncertainty around how the Constitution will be amended and what that will entail inevitably hurts investor confidence in an economy that is desperate for economic growth. This whole exercise highlights the negative effect that populism has on the wellbeing of liberal democracies.

This case can hopefully be used provide a better understanding of how populism influences important national debates in other countries. For example, in recent years immigration has become a contentious in Europe, with a variety of right-wing populist parties coming to prominence on the back of it. Populist parties, with their promise of simple solutions to an extremely complex issue, could lead to countries adopting rash and ultimately harmful policies.

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## 8. Appendix

### 8.1. Appendix 1

#### Property

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application—
- (a) for a public purpose or in the public interest; and
  - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—
- (a) the current use of the property;
  - (b) the history of the acquisition and use of the property;
  - (c) the market value of the property;
  - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - (e) the purpose of the expropriation.
- (4) For the purposes of this section—
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
  - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of

past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6)



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