

REPUBLIC OF SOUTH AFRICA

CONSTITUTION EIGHTEENTH AMENDMENT BILL

(As introduced in the National Assembly (proposed section 74(2); initiated by the Ad Hoc Committee on the amendment of section 25 of the Constitution of the Republic of South Africa, 1996; Particulars of the proposed amendments and prior notice of introduction published in Government Gazette No. 42902 of 13 December 2019)

(The English text is the official text of the Bill)

**(AD HOC COMMITTEE ON THE AMENDMENT OF SECTION 25 OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996)**

[B 20...]

GENERAL EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to provide that where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil; and to provide for matters connected therewith.

PREAMBLE

WHEREAS there is a need for urgent and accelerated land reform in order to address the injustices of the past that were inflicted on the majority of South Africans and especially as the hunger for land amongst the dispossessed is palpable and the dispossessed are of the view that very little is being done to redress the skewed land ownership pattern;

AND WHEREAS section 25 of the Constitution of the Republic of South Africa, 1996, must be amended to make explicit that which is implicit therein, so that an amount of nil compensation is explicitly stated as a legitimate option for land reform;

AND WHEREAS such an amendment will contribute to address the historic wrongs caused by the arbitrary dispossession of land;

AND WHEREAS such an amendment will further ensure equitable access to land and will further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 25 of Constitution

1. Section 25 of the Constitution of the Republic of South Africa, 1996, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(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: Provided that where land and any improvements thereon are expropriated for purposes of land reform as contemplated in subsection (8), the amount of compensation may be nil.”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The amount of the compensation as contemplated in subsection (2)(b), and the time and manner of any 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—”; and

(c) by the insertion after subsection (3) of the following subsection:

“(3A) For the furtherance of land reform, national legislation must, subject to subsections (2) and (3), set out circumstances where the amount of compensation is nil.”;

(d) by the insertion after subsection (4) of the following subsection:

“(4A) The land is the common heritage of all citizens that the state must safeguard for future generations.”;

(e) by the substitution for subsection (5) of the following subsection:

“(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis.”.

Short title and commencement

2. This Act is called the Constitution Eighteenth Amendment Act, 2021, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION EIGHTEENTH AMENDMENT BILL, 2021

1. INTRODUCTION

This Bill aims to amend the Constitution of the Republic of South Africa, 1996 (“the Constitution”), by providing for the expropriation of land without the payment of compensation. During the Fifth Parliament, the Constitutional Review Committee was mandated by the two Houses of Parliament to solicit the views of the public on the possible review of section 25 of the Constitution. The review focused on allowing the state to expropriate land in the public interest without compensation, as well as on mechanisms for expropriating land without compensation. After an extensive consultation process, the Constitutional Review Committee filed a report in the two Houses recommending that:

“Section 25 of the Constitution must be amended to make explicit that which is implicit in the Constitution, with regards to expropriation of land without compensation, as a legitimate option for land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs.”

It further recommended that Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of section 25 of the Constitution. That mechanism was established by a resolution of the National Assembly first during the Fifth Parliament, and then again in the Sixth Parliament, which resulted in the development of this Bill.

2. OBJECTS OF THE BILL

The purpose of the Constitution Eighteenth Amendment Bill, 2019 (“the Bill”), is to amend section 25 of the Constitution so as to provide that the right to property may be limited in such a

way that where land is expropriated for land reform, the amount of compensation payable may be nil. Further to clarify that such limitation is a legitimate option for land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs.

3. CONTENTS OF THE BILL

3.1. Clause 1 proposes an amendment to section 25 of the Constitution to provide—

3.1.1 that where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil;

3.1.2 for national legislation to provide circumstances where the amount of compensation is nil;

3.1.3. for the insertion after subsection (4) of a new subsection (4A) in order to require the state to safeguard land, which is the common heritage of all citizens, to be safeguarded;

3.1.4. for the substitution of subsection (5) to add that the state must take reasonable legislative and other measures to enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis; and

3.2. Clause 2 provides for the short title and commencement.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None

5. PARLIAMENTARY PROCEDURE

- 5.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 74(2) of the Constitution since its object is to amend a section within Chapter 2 of the Constitution of the Republic of South Africa, 1996.
- 5.2 The Committee is of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.

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