



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

6th DEMOCRATIC PARLIAMENT



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Consultations on a Committee Bill amending section 25 of the Constitution

Date: 2019.11.06

The Constitution

- 25. Property.**—(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.

25. Property (continued)

(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).

Process in the Fifth Parliament

- The Constitutional Review Committee
 - Mandated by resolution of both Houses to review section 25 and propose constitutional amendments
 - Make possible for the state to expropriate land, in the public interest, without compensation.
 - **15 November 2018** recommendation - section 25 of the Constitution to be amended.
 - Make explicit that which is implicit in the Constitution

Ad Hoc Committee

NA resolved:

- **06 December 2018** that an *ad hoc* committee be established in terms of Rule 253, the committee to:
 - *“(a) initiate and introduce legislation amending section 25 of the Constitution”*
- **15 March 2019** recommended that the matter be concluded in the Sixth Parliament.

Process in the Sixth Parliament

NA resolution of 25 July 2019:

“4. [16:00] The Chief Whip of the Majority Party moved: That the House – ...

(3) establishes an *ad hoc* committee in terms of Rule 253 to–

(a) initiate and introduce legislation amending section 25 of the Constitution;

(b) have regard to the work done and recommendations as contained in the reports of the Constitutional Review Committee and the previous *Ad Hoc* Committee on Amendment of section 25 of the Constitution; ...; and

(e) exercise those powers as set out in Rule 167 that may assist it in carrying out its task;”

(MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY pp 70 – 71:
“Question agreed to. Motion accordingly agreed to)

The policy that arises from the mandate

From the NA resolution of **25 July 2019**: “That the House –

- notes that in the Fifth Parliament the report of Constitutional Review Committee on Review of section 25 of the Constitution, 1996 (*ATC, 15 November 2018, p 4*) was adopted by the Assembly and the Council on 4 and 5 December 2018 respectively, recommending that Parliament –
(a) amends section 25 of the Constitution 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.” (*own emphasis*)

The policy that arises from the mandate

The Policy statement that thus informs Bill is :

- Amend section 25 of the Constitution;
- Make explicit that which is implicit in the Constitution namely that “Expropriation of land without compensation is a legitimate option for land reform”.

Consultations - Workshop

The relevant powers of the Ad Hoc Committee (NA Rule 167):

“For the purposes of performing its functions a committee may...—
(b) receive petitions, representations or submissions from interested persons or institutions;
(c) permit oral evidence on petitions, representations, submissions and any other matter before the committee;
(d) conduct public hearings;”

- Differing views on how to affect the amendment
- Parliament wants to hear all the views
- When drafting the Bill all the views will be considered
- This workshop is an important consultation prior to finalisation of the Bill

Views on amending section 25 (1)

- Subsection (3) deals with just and equitable compensation and thus allows for flexibility (compensation need not be market related).
 - I.e. It is not necessary to amend section 25 – but the mandate of the committee requires that what is implicit must be made explicit.
- High Level Panel: “Effective land reform requires a suite of laws.”
 - Section 25 provides the framework and must enable this suite of laws.

Views on amending section 25 (2)

- The whole of section 25 is an impediment to the expropriation of land without compensation.
- Subsections (1), (2)(b) and (3) protects “illegitimate” property rights acquired under the colonial and apartheid regimes.
- Subsection (4) defines public interest to include land reform: However, there is a need to balance the protectionist subsections (1) to (3) against the transformative clauses of the Constitution.

Views on amending section 25 (3)

Examples of how the issue of compensation could be addressed:

Option 1: Amend subsections (2)(b) and (3):

“(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 a court may determine that no compensation is payable in the event of expropriation of land for the purposes of land reform...

(3) **[The]** Where compensation is payable, 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—”

Option 2: Insert a new subsection:

“(4A) Notwithstanding the requirement for compensation contemplated in subsections (2), (3) and (4), land may be expropriated without the payment of any compensation as a legitimate option for land reform in order to redress the results of past racial discrimination.”.

Views on amending section 25 (4)

- Presidential panel: The current framing of section 25 is compensation-centric.
 - A new section could be included to require the development of enabling legislation to set out criteria for expropriation without compensation.

Example of an enabling clause:

“(4A) National legislation must set out the circumstances under which property may be expropriated without the payment of compensation.”

END