

Department of Mineral Resources and Energy



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Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA



SUBMISSION TO THE AD HOC COMMITTEE TO INITIATE AND INTRODUCE LEGISLATION AMENDING SECTION 25 OF THE CONSTITUTION

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PRESENTATION LAYOUT

Introduction

Current Constitutional Dispensation

Mineral Resource Reform

Conclusion



INTRODUCTION

- The Minister of Mineral resources and Energy welcomes the opportunity to submit comments on the Constitution Eighteenth Amendment Bill.
- The main object of the Bill is fully supported in as far as it seeks 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.
- Such limitation must be regarded as a legitimate option for land reform.
- The Bill in its current form will bring much needed legal certainty in that it explicitly states what is already implicitly provided for in section 25.



CURRENT CONSTITUTIONAL DISPENSATION

- The co-existence in section 25 of the constitutional protection of existing property rights alongside the constitutional imperative of redress through land related reform is perceived by many as anomalous.
- However, section 25 in its current form already permits the enactment and implementation of restorative legislation without compensation obligations.
- Since the commencement of the Constitution, legislation such as the National Water Act and the National Environmental Management Act have been promulgated to vest the Country's natural resources under state custodianship.



MINERAL RESOURCE REFORM

- The Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (“MPRDA”) is an profound example of restorative legislation.
- Through its enactment, land and related reform has been achieved by providing for the vesting of the nation’s mineral resources under state custodianship without the obligation to pay compensation.
- Confirming the legitimacy of this regime, the Constitutional Court in *Agri SA*, cautioned against over-emphasis of private property rights at the expense of the state’s social responsibilities.
- Therefore, whereas Section 25 in its current form already implicitly provides for circumstances where compensation of nil will be just and equitable, the Bill now explicitly provides that the right to property is not absolute and that where land is expropriated for land reform, the amount of compensation payable may be nil.



CONCLUSION

- The Bill and its main object to accelerate land and related reform is supported.
- It brings long needed legal certainty by clarifying the existing anomalous relationship between absolute protection of existing property rights and the state's restorative obligation to redress past injustices through land and related reforms.



Thank You



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