



**AL JAMA-AH Study Group
of the Ad Hoc Committee
on the Amending of s25 of the Constitution**

**Comparison of the current status of AL JAMA-AH amendments to the 18th Constitution
Amendment Bill æ at 18 June 2021 for presenting to the ANC Study Group of the Ad Hoc
Committee**

Constitution of the Republic	18th Constitution Amendment Bill	ANC Proposal Deletions to the text are in blue struck through the text Insertions to the text are in blue and underlined	Al Jama-ah Proposal
The Preamble We, the people of South Africa, Recognise the injustices of the past;	The Preamble WHEREAS there is a need for urgent and accelerated land reform in	No amendment proposed	WHEREAS the Constitutional amendment on expropriation is before Parliament and is one of the most contested pieces of law in South Africa's history.

order to address the injustices of the past that were inflicted on the

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 landownership 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,
AND WHEREAS land reform wrongly premised on European instead of African jurisprudence tenure must not be modified but proper land reform should be executed,

AND WHEREAS there is misdistribution as a result of wrongful dispossession of land, this must be addressed in terms of a South African Black revolution.

Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity. We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to- *Heal the divisions of the past and establish a society based on democratic values. Social justice and fundamental human rights; Lay the foundation for a democratic open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life for all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.* May God protect our people.

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:



AND WHEREAS Section 235 of the Constitution (self-determination) is concerned that should not impact,
BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows

Nkosi Sikel' iAfrika. Morena
bolokasethjaba sa heso.
God seen Suid Afrika. God bless
South Africa. Mudzimu
fhatutshedza Afurika. Hosi
katekisa Afrika.

On Section 25 (1)			
<p>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.</p>	<p>No amendment</p>	<p>No amendment proposed</p>	<p>No amendment proposed</p>
On Section 25 (2)			
<p>25 (2) Property may be expropriated only in terms of law of general application: 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 which have either been agreed to by those affected or decided or approved by the court.</p>	<p>(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 which have either been agreed to by those affected or decided or approved by the court; <u>provided that in accordance with subsection (3A) a court may, where land and any improvements thereon are expropriated for the purposes of land reform, determine that the amount of compensation is nil</u></p>	<p>“(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 the purposes of land reform as contemplated in subsection 8, the amount of compensation is may be nil.”;</p>	<p>“(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 the purposes of land reform as contemplated in subsection 8, the amount of compensation may be nil.”;</p>

<p>On Section 25(3)</p>	<p>(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—</p> <p>(a) the current use of the property;</p> <p>(b) the history of the acquisition and use of the property;</p> <p>(c) the market value of the property;</p> <p>(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and</p> <p>(e) the purpose of the expropriation.</p> <p><u>“(3A) National legislation must, subject to subsections (2) and (3), set out specific circumstances where a court may determine that the amount of compensation is nil.”.</u></p>	<p>“(3) The amount of the compensation <u>as contemplated in subsection (2)(b)</u>, 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-</p> <p>(a) the current use of the property;</p> <p>(b) the history of the acquisition and use of the property;</p> <p>(c) the market value of the property;</p> <p>(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and</p> <p>(e) the purpose of the expropriation.</p> <ul style="list-style-type: none"> ▪ by the insertion after subsection (3) of the following subsection: <p>“(3A) For the furtherance of land reform, National legislation must, subject to subsections (2) and (3), set out <u>specific</u> circumstances where <u>a court may determine that</u> the amount of compensation is nil.”.</p>	<p>“(3) The amount of the compensation <u>as contemplated in subsection (2)(b)</u>, 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-</p> <p>(c) the current use of the property;</p> <p>(d) the history of the acquisition and use of the property;</p> <p>(c) the market value of the property;</p> <p>(f) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and</p> <p>(g) the purpose of the expropriation.</p> <ul style="list-style-type: none"> ▪ by the insertion after subsection (3) of the following subsection: <p>“(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.”.</p> <p>“(3B) national legislation must be approved in a subcommittee where all political parties are represented and subject to 2/3 majority or more”.</p>
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On Section 25(4)			
<p>25 (4) For the purposes of this section-</p> <p>(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;</p> <p>and</p> <p>(b) property is not limited to land.</p>	No amendment	<p>By insertion after subsection (4) of the following subsection:</p> <p><u>The land is the common heritage of all citizens that the state must safeguard for future generations.</u></p>	<p>By insertion after subsection (4) of the following subsection:</p> <p><u>The waqf land is an endowment solely offered to Allah that must be safeguard for future generations. The word 'waqf' literally means 'stop' or 'contain' in Arabic. Legally, the term has been employed in Muslim communities to mean a 'religious endowment'; that is, a sacred endowment of property such as a school or a hospital to be held in trust. It is essentially used for charitable purposes in such a manner that it should benefit the current generation as well as the subsequent generations.</u></p>
On Section 25(5)			
<p>25 (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.</p>	No amendment	<p>The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable <u>state custodianship of certain land in order for</u> citizens to gain access to land on an equitable basis.</p>	<p>The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable <u>state custodianship of certain land in order for</u> citizens to gain access to land on an equitable basis.</p>
On Section 25(6)			

<p>25 (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.</p>	<p>No amendment</p>	<p>No amendment proposed</p>	<p>No amendment proposed</p>
<p>On Section 25(7)</p>			
<p>(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.</p>	<p>No amendment</p>	<p>No amendment proposed</p>	<p>No amendment proposed</p>

<p>On Section 25(8)</p>			
<p>25 (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).</p>	<p>No amendment</p>	<p>No amendment proposed</p>	<p>No amendment proposed</p>
<p>On Section 25(9)</p>			
<p>25 (9) Parliament must enact the legislation referred to in subsection (6).</p>	<p>No amendment</p>	<p>No amendment proposed</p>	<p>And should not exclude a provision for reparations.</p>

