

REPUBLIC OF SOUTH AFRICA

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# CONSTITUTION EIGHTEENTH AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 74(2); Ad Hoc Committee to initiate and introduce legislation amending section 25 of the Constitution of the Republic of South Africa, 1996, with the Assembly's permission in terms of Rule 273(3); Draft Bill and prior notice of its introduction published in Government Gazette No. 42902 of 13 December 2019)*  
*(The English text is the official text of the Bill)*

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(AD HOC COMMITTEE TO INITIATE AND INTRODUCE LEGISLATION AMENDING SECTION 25  
OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996)

[B 18—2021]

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**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; to provide that national legislation must provide circumstances where the amount of compensation is nil; to provide for land to be the common heritage of all citizens that the state must safeguard for future generations; to require that conditions should be fostered to enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis; 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 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 participants in ownership, food security, agricultural and other land reform programmes,

**B**E 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

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- 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—”; 5
- (c) by the insertion after subsection (3) of the following subsection: 10  
     “(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: 15  
     “(4A) The land is the common heritage of all citizens that the state must safeguard for future generations.”; and
- (e) by the substitution for subsection (5) of the following subsection: 20  
     “(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*.

## **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 where the amount of compensation may be nil. 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.

Following extensive consultations, the Committee also considered issues of custodianship of land.

### **2. OBJECTS OF THE BILL**

The purpose of the Constitution Eighteenth Amendment Bill, 2021 (“the Bill”), is to amend section 25 of the Constitution so as to provide that where land is expropriated for land reform, the amount of compensation payable may be nil. The Bill further clarifies that nil compensation 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 participants in ownership, food security, agricultural and other land reform programs. It also deals with matters related to land as the common heritage of all citizens to be safeguarded for future generations by the state and requiring that conditions should be fostered to enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis.

### **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 allow for land to be the common heritage of all citizens that the state must safeguard for future generations; and

3.1.4 for the substitution of subsection (5) to require that conditions should be fostered to enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis.

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

#### **4. FINANCIAL IMPLICATIONS FOR THE STATE**

None

#### **5. CONSULTATIONS**

5.1 The Committee consulted experts on property law and constitutional law. The Committee also consulted the public, and held extended hearings in all provinces. The Committee further consulted with the Departments of Justice, Land Reform and Rural Development, Mineral Resources and Energy, and Public Works and Infrastructure.

#### **6. PARLIAMENTARY PROCEDURE**

6.1 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.

6.2 The Committee is of the opinion that it is necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as the Bill directly affects traditional or Khoi-San communities and contains provisions pertaining to customary law or customs of traditional or Khoi-San communities.





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