

The Draft Constitution Eighteenth Amendment Bill

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Changing the Constitution is unnecessary

The existing Section 25 already makes provision for expropriation without compensation -

- Section 25(8) expressly states that no provision of Section 25 may impede the state from acting to achieve land reform, provided it is done on a reasonable and justifiable basis, taking all relevant factors into account and is done by way of laws of general application.
- The preamble to the Bill effectively confirms this - it states that Section 25 “must be amended to make explicit which is implicit therein”.

Problems of the land reform process

The land reform process has not been affected by Section 25 of the Constitution. The factors that have played a role are:

- Corruption, inefficiency and incompetence
- Extremely slow pace of restitution
- A minimal budget provision (land reform, restitution and farmer support account for 0.35% of total Government expenditure in the 2021/22 budget, including debt service costs)
- Failure to amend the existing Expropriation Act of 1975
- An incapacity of the Department of Rural Development and Land Reform to perform its functions, even leading the Constitutional Court to allow the outsourcing of certain of these functions

Land reform: questions that must now be answered

The proposed change to Section 25 will not answer any of the following questions:

- How are decisions on expropriation going to be taken?
- What criteria are to be applied in these decisions?
- Who are to be the beneficiaries and how will they be chosen?
- Will the process be transparent?
- Is post-settlement support to be provided to beneficiaries?
- What legal rights will beneficiaries have? Full legal title?

Land reform: questions to be answered, continued

- Will a properly staffed and funded land reform agency manage the process in an efficient manner, in compliance with relevant legislation and regulations?
- Is there a political will to address these questions?
- Will the process be given sufficient certainty and predictability, to avoid a further shock to business and investor confidence?

Conclusion

If these questions are not addressed in an effective and convincing manner, the land reform process will not succeed.

It can be expected that if a transparent, rational and clearly defined administrative process for land reform is not laid down and carefully followed, legal proceedings will bring the process to a halt.

The underlying issues need to be addressed for any progress to be achieved. Focusing only on the proposed change to Section 25 of the Constitution, therefore offers no solution on its own.