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| **COSATU Submission:** **Amendment of Section 25 of the Constitution** **(Constitution 18th Amendment Bill)****22 March 2021** |
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**Submitted to:****Ad-Hoc Committee:** **Amendment of Section 25 of the Constitution****Parliament****Republic of South Africa** |

1. **Introduction and Support for the Constitution 18th Amendment Bill**

COSATU welcomes and strongly supports the Constitution 18th Amendment Bill.

The Bill is progressive and seeks to enhance the capacity of the state to accelerate land reform, both urban and rural. It is necessary, just, equitable and rationale. It is long overdue.

The scars of colonial and apartheid dispossession continue to run deep and remain the original sin in South Africa’s painful history. Little has changed since 1994 to fundamentally alter this legacy. Without decisive, comprehensive and concerted action, it is unlikely to change either.

Millions of urban and rural residents till today do not own their own or sufficient land to live and work upon. Millions remain condemned to live in informal areas and back yards. Millions of farm workers and rural residents are denied the opportunity to become farmers. These disposed persons remain overwhelmingly African, Coloured and women. They are the urban and rural working class, peasantry and poor.

As history has shown all too clearly in neighbouring Zimbabwe, this is a wound that cannot by any sane mind, be allowed to continue to fester untreated. Failure to deal with it in a wholistic and progressive manner is a guarantee of social collapse in the future.

Whilst there are many reasons why the state has failed to meaningfully transform the ownership of land since 1994, the prohibitive and often unfair prices demanded during expropriation cases remain a key impediment.

The Federation thus supports this Constitution Amendment Bill and believes it has been drafted in a manner that is consistent with the principles of the Constitution and in particular the Bill of Rights.

1. **Bill’s Proposed Amendment – Determination of Compensation**

Section 1 (b) of the Bill provides for the affected parties, namely the state and the owner to come to an agreement on compensation. This is correct.

The state must table a proposed offer to which the affected parties must counter, accept or reject. This is an administrative function that is correctly allocated to the state and affected parties.

Section 1 (b) correctly provides for in the event of the state and parties failing to find agreement on the amount of compensation, that such a matter can be referred by either party to the relevant court for final determination.

This is inline with the constitutional right of all persons to seek protection, recourse and relief from the courts.

It provides for the correct balance between the administrative responsibilities of the state, the legal rights of affected parties and the role of courts as a final determinant in the event of parties failing to find common agreement.

COSATU supports this provision in full.

1. **Bill’s Proposed Amendment – Nil Compensation**

The Preamble and Section 1 (b) and (c) allow the state in certain instances to provide for the payment of nil compensation when expropriating land in support of land reform.

The Bill premises this clearly upon the Constitutional obligation of the state to address the legacies of colonialism and Apartheid.

The Bill states correctly that such expropriation with nil compensation may be a necessary tool by the state in support of its constitutional obligations to advance land reform.

It states clearly that this is limited to land and the advancement of land reform.

This is a correct approach. The powers of the state must always be balanced against the rights of ordinary citizens, the overwhelming majority of whom are workers.

Society at large is in agreement that land reform to date has failed. Often this has been because the state has in fact been held to ransom by owners demanding exorbitant compensation. The Mala Mala Game Reserve price of R800 million a few years ago depleted government’s meagre land reform budget.

The Constitution 18th Amendment Bill mandates government and Parliament to enact the necessary legislation to give expression for when nil compensation is warranted.

The Expropriation Bill, provides for five instances where nil compensation may be provided:

* Idle private land;
* Idle state land;
* Abandoned land;
* Land whose value has been inflated by state investments; and
* Land that poses a risk to the environment, health and safety.

The Expropriation Bill also mandates the expropriating authority and courts to take into account:

* How the property was acquired;
* The history and usage of the property;
* The impact upon the owner and communities;
* The legacies of colonialism and apartheid;
* Its market value and improvements;
* Government’s intended use of the property; and
* Unregistered rights, e.g. those of farm dwellers, labour tenants etc.

The Constitution 18th Amendment Bill and Expropriation Bill are complementary. They are intrinsically interlinked. They are constitutional, rationale, fair and equitable.

Contrary to attacks on the Bill from those opposing expropriation without compensation, the Bill does not provide a blank cheque to government.

The Bill speaks to the Constitutional obligations upon government to advance land reform and address the legacies of apartheid and colonialism.

The Bill and the Expropriation Bill provide clear and rationale instances in when nil compensation may be preferred. It is not a blank cheque nor unfettered powers. It provides a concise mandate and powers to the state that if used correctly can significantly accelerate long delayed land reform.

1. **Reactionary Opposition to the Bill**

The ownership of land is a sensitive matter in all countries. It speaks to a nation’s identity, heritage and future. It speaks to the economic empowerment of its people, not only in rural and agricultural regions but also in urban areas.

South Africa’s devastating legacies dating to its colonial and apartheid era are beyond dispute. We remain one of the most unequal societies. Urban residents remain propertyless and condemned to informal settlements and backyard dwellings. Farm and rural residents who want to till the land are denied the opportunity.

The Constitution 18th Amendment and Expropriation Bills are the subject of massive attacks. Those on the extreme and reactionary right are determined to protect the legacies of the past. They are misleading the public by falsely claiming that these Bills will render property rights meaningless and the result will be anarchy.

Reading the Bills provides assurance that this is not the case. Expropriation without compensation is limited to certain types of land. The Bills state clearly that nil compensation must take into account certain conditions and be utilised for land reform purposes. The Bills enshrine the rights of the affected to seek relief from the courts and provide clear criteria for the courts when making a final decision.

The hysterical attacks of the right do justice to no one. They inject alarm and hysteria when none is warranted. They spread a false narrative which only serves to send panic. They do not help provide rational debate when it is most needed. It is knee jerk and short term attempt to score cheap populist popularity. These attacks are done at the expense of the nation seeking to overcome our painful past and present and to seek a more just future.

Failure to address the legacies of Apartheid and colonialism can only serve to send South Africa down a dangerous cul de sac that one day will explode when the disempowered and impoverished can stomach no more. This Bill is a correct tool to ensure South Africa avoids that cul de sac.

1. **Populist Opposition to the Bill**

There are populist elements that will claim this Bill is a sell out to the wealthy and that it fails to advance land reform. This again is based upon falsehoods not facts.

The Bill is clear. Government must advance land reform and address the legacies of the past.

The Bill provides significant powers to government to expropriate and when needed and relevant to do so with nil or partial compensation. This will, if used correctly, significantly empower the state.

The weaknesses are not with the Bill. The weaknesses as always, will be whether the state fully utilises the powers allocated to it by the Constitution and legislation.

COSATU believes that the Bill takes the correct Constitutional and balanced approach. It compels the state to advance land reform and provides it with the necessary tools.

Equally it protects the rights of the affected parties by providing clear legal processes, including the right to seek relief from the courts. This is critical for COSATU as in most instances expropriation involves the homes of the working class when the state needs to build roads, power stations, dams, schools etc.

This Bill provides surety that the interests and rights of workers will be protected and advanced. The safeguards provided for in the Bill are critical. Legislation must be forward looking and take into account possible future abuses. This Bill correctly does that.

1. **Conclusion**

COSATU welcomes and supports the Bill. The Federation urges the speedy passage of the Constitution 18th Amendment Bill by Parliament and its ascension by the President.

COSATU hopes that its submission will assist the Ad-Hoc Committee with its critical task in ensuring the speedy passage of the Bill.

Thank you.

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