

Dear South Africa is a network of online platforms designed to facilitate government and encourage the public to participate in unbiased decision-making processes or policy formation at SOE, municipal, provincial and national levels. DearSA NPC [2017/264231/08]



Constitution Eighteenth Amendment Bill

6 December 2019 to 29 February 2020

The AdHoc Committee to Initiate and Introduce Legislation Amending Section 25 of the Constitution called for written submissions on the Draft Constitution Eighteenth Amendment Bill.

The aim of the Bill is to amend the Constitution of South Africa so as to, among others, provide that where land and any improvements thereon are expropriated for the purposes of land reform, nil compensation may be payable.

The Committee resolved to extend the deadline to 29 February 2020. This was mainly because the Bill was published over the festive season, a rejection of some comments by parliament's servers, and the public did not have sufficient time to comment meaningfully on the Bill. The initial deadline was 31 January 2020.

Submissions and enquiries were directed to Mr V Ramaano at section25@parliament.gov.za or tel: (021) 403-3820 or 083 709 8427

Dear South Africa hosted a participation project on our mobile and online platform to facilitate, educate and encourage public participation and comment to shape this bill.

<https://dearsouthafrica.co.za/constitution-eighteenth-amendment-bill/>

Included on the web page was;

- 1 - the published Bill and related documents as downloadable PDFs
- 2 - a summary of the Bill
- 3 - a live view of public comments (with a counter and breakdown reflecting number of participants)
- 4 - video summaries
- 5 - links to relevant media articles
- 6 - a portal which posed a single question (with the option of three responses)
- 7 - a comment facility to provide input on the Bill




Each public entry was individually delivered to the committee Secretary Mr V Ramaano at section25@parliament.gov.za. DearSA also captured all public entries which have been used to produce this report.

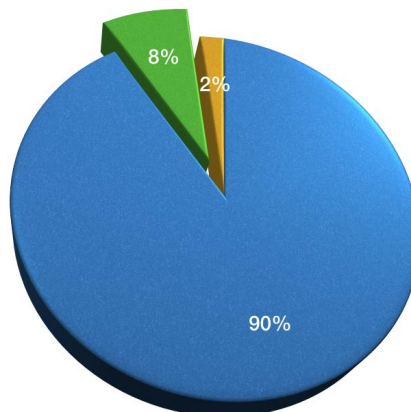
Note; In order to accurately reflect public comment, DearSA's projects are unbiased and hold no partisan opinion or agenda. [Raw captured data is attached as an Excel file.](#)

A total of **190,573** comments were received by the set closing date of 29 February 2020 (included in the Excel file). This report reflects the entries received by the closing date.

Question presented;

Do you support the Constitution Eighteenth Amendment Bill?

	Yes, I do	[14,870 selected]	7.8%
	No, I do not	[171,655 selected]	90.07%
	Not fully	[4,048 selected]	2.12%



Comments

The participants are encouraged to provide comment to justify their selection in order to help shape the policy amendment.

Of the Yes comments, the common theme is around returning the land to its rightful owners - although little mention is made of who the rightful owners are. Furthermore, there appears to be little understanding of the proposed land-ownership process and current constitutional measures concerning expropriation.

- 1 - Will government be the custodian or will private ownership be encouraged by the issuing of title deeds?
- 2 - How will government deal with disputes between current black land owners and potential black land owners?
- 3 - What about mineral rights or property taxes and levies?
- 4 - How does ownership of land translate into wealth of the individual?

Majority of the Yes comments carried conditions, including;

- 1 - Powers should lie with the executive, not the courts
- 2 - Ingonyama Trust Land must also be expropriated
- 3 - Expropriation must include training and education facilities for new owners
- 4 - Government must provide funds for building and development
- 5 - Government must own the land and lease it to the people
- 6 - Compensation will only delay the process.



Comments (continued)

Of the No comments, the common themes are around current land ownership and repayment of loans held with financial institutions. Concerns are raised over the levels of corruption in government and their handling of this process outside of the courts.

- 1 - What about people who legally purchased property after '94?
- 2 - What about the current black land owners who bought property - will ours also be expropriated without compensation?
- 3 - What about the 1.8 million land claims already processed, finalised and compensated under the existing constitution?
- 4 - How will government ownership of the land create wealth for the individual?
- 5 - Why is government not redistributing state-owned land first?
- 6 - Expropriation without compensation will lead to disinvestment of foreign investment
- 7 - Property is not limited to land - are copyrights, intellectual property, vehicles, businesses, investments and other forms of property included in the definition of "property" in the expropriation plan?
- 8 - The insertion of (3A) leaves a vacuum and as the AdHoc committee has not yet been able to identify ANY circumstances under which compensation is nil, there is no further need for any further amendments and/or National Legislation intervention.
- 9 - Will current bond-holders pay back loans on property expropriated without compensation? The intended amendments are a threat to banks which play a critical role in our economy.

Of the Not fully comments, majority reflected a concern over the previous restitution process alongside an acknowledgment of the past injustices. The common theme was a recognition of the importance of land restitution and an obligation to grow the economy responsibly. **This comment option provided the richest input in terms of solutions, suggestions and criticism (view Excel file for complete input).**

Suggestions and conditions include;

- 1 - Giving more people a stake in the country and a tangible asset like property will create greater stability as everybody will have something to lose if things go wrong.
- 2 - A need to differentiate between residential and agricultural land.
- 3 - Urban land, purchased more than 10 years ago that has not been developed and is not occupied by the owner could be classed as a speculative purchase and should be expropriated, with compensation pegged at the original purchase price.
- 4 - RDP houses have been problematic due to corruption, fraud and poor quality. The government should revert to providing serviced stands with title deeds to create faster development and at the same time save money.
- 5 - The government's track record of land redistribution has been a disaster, with more than 90% of these interventions having failed. Government does not have the resources to support these farmers and the refusal to give the recipients title deeds has meant that financial institutions would not lend money to them without the collateral that the value of the land would supply. If agricultural land was to be expropriated without compensation, the same

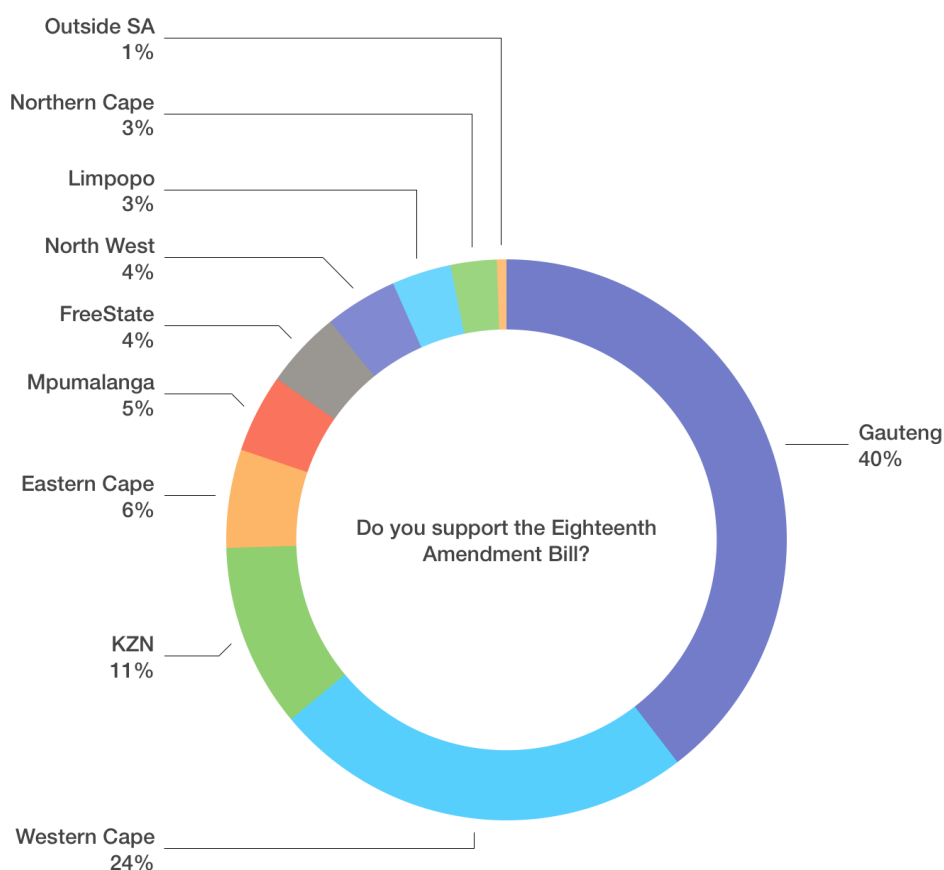


would also apply to existing commercial farmers, especially for loans for capital projects needed to boost agricultural production and also job creation.

- 6 - The knock-on effects will include reduced food security, a guaranteed downgrading to junk status, greater borrowing costs to the government and thus tax payers, even slower growth and development, greater unemployment and more subsistence farming.
- 7 - A prime example of this is the erstwhile homelands, controlled by Tribal Authorities. These areas are being overgrazed, resulting in land degradation, but 80% of the grazing animals are owned by members of the Tribal Authorities who expect their subjects to reduce stock numbers but not their own herds and flocks. This has added to increased urbanization. Are these areas to be exempted from expropriation?
- 8 - If agricultural land is to be expropriated, it must be restricted to underutilized land. Once again, compensation should be based on the price paid more than 10 years ago. A further proviso is that the owners be given two years to redress this non-utilization, failing which, the land can be expropriated. This approach will not increase food insecurity, but should improve production.
- 9 - A less disruptive and more progressive approach would be to encourage commercial farmers to establish worker's trusts so that they also gain from agriculture.

Demographics

Comments originated from all provinces with the greatest input arising from Gauteng, followed by Western Cape and KZN. Demographics can be further broken down into comment options (yes, no, not fully) per region.





History of the proposal to amend the Constitution

June 2018 - Amendment of Section 25 of the Constitution

<https://dearsouthafrica.co.za/section-25/results/>

The Joint Constitutional Review Committee (Joint CRC) issued a call for comment and held public hearings to get public input on the suggested amendment to the constitution. The public was presented with the following statement from Vincent Smith Chairperson of the CRC, intended to stimulate meaningful input;

"I want the public to answer the question as to whether the Constitution, section 25, is an impediment to the land reform programme. If it is indeed an impediment, what changes do they desire. We also want to hear from the other side of the spectrum, from those who argue the Constitution in its current form is not an impediment. I am referring here specifically to section 25 (8) and for them to argue why they believe section 25 is not an impediment. That's really what we really want South Africans to have an opportunity to express themselves on because both sides seem to think that they have strong arguments. The Committee would then, on the basis of the arguments presented, make a recommendation to Parliament."

Dear South Africa facilitated the written public participation and attracted input from **229,857** South Africans. The outcome was as follows;

Total in favour of amending Section 25 – **100,308**

Total opposed to amending Section 25 – **129,549**

The CRC formulated their report to parliament with the following recommendations and findings;

- 1 - There is unequal and skewed ownership of land in the country.
- 2 - The security of tenure for farmworkers, farm tenants and those residing on communal land held in a Trust must be assured.
- 3 - Corruption, an insufficient land reform budget, along with a lack of capacity within the state were mentioned as hindering the land reform process.
- 4 - The state is urged to formulate a clear strategy for land redistribution to address the injustices of the past.
- 5 - The Constitution should explicitly state the expropriation of land without compensation as a legitimate option for land reform.

December 2018 - Expropriation Bill

<https://dearsouthafrica.co.za/expropriation-bill/>

The draft law spells out in detail how land expropriation will work, detailing how valuation should be done, how disputes should be settled, and how money should be paid. The Expropriation Bill also specifically holds that "it may be just and equitable for nil compensation to be paid where land is expropriated in the public interest".

Dear South Africa facilitated the written public participation and attracted input from **88,882** South Africans. The outcome was as follows;

Total opposed to the Expropriation Bill – **74,175**

Total in agreement with the Expropriation Bill – **6,991**

Total not fully supporting the Expropriation Bill – **7,716**



December 2019 - Constitution Eighteenth Amendment Bill

<https://dearsouthafrica.co.za/constitution-eighteenth-amendment-bill/>

The content of this report as from page 1 contains the participation details.

What will happen after the public hearings?

The AdHoc Committee will return the Bill to the National Assembly after considering all the public input. The members of the National Assembly will then vote on the Constitution Eighteenth Amendment Bill. If passed, the Bill will then be brought before the National Council of Provinces (NCOP). Once passed, the law will allow for the expropriation of land AND property without compensation.

Objectives of the Bill

Subsection 2 (b); Provides for a court of law to make a decision for nil compensation when land or property is expropriated for land reform.

Subsection 3; Sets out the conditions and circumstances that must be considered when a decision is made by a court regarding the amount of compensation.

Subsection 3A; National legislation must be passed that outlines the circumstances when a court may arrive at nil compensation for expropriated land or property e.g. The Expropriation Bill.

Why is Parliament conducting public hearings again?

Parliament, mandated by the Constitution, must ensure that the public is involved in all its processes, including law-making. To satisfy this mandate, the Ad Hoc Committee is inviting all interested and affected parties, individually and or organised, to participate in the 18th Amendment of the Constitution, as it relates to Section 25.

The Committee will consider all public input on the amendment of the Constitution in order for the NA to pass the Bill.

Thank you

Rob Hutchinson - MD, Dear South Africa

rob.hutchinson@dearsouthafrica.co.za

084 557 4828