

Voluntary Report – Voluntary - Public Distribution

Date: December 13,2019

Report Number: SF2019-0038

Report Name: Constitutional Amendments to Expropriate Land Without Compensation Moving Ahead

Country: South Africa - Republic of

Post: Pretoria

Report Category: Agricultural Situation, Agriculture in the News, Trade Policy Monitoring

Prepared By: Wellington Sikuka

Approved By: Laura Geller

Report Highlights:

South Africa has moved beyond considering whether section 25 of the Constitution should be amended to allow expropriation without compensation and has published a draft Bill inviting public comments. Written submissions on the Draft Bill will be accepted until January 31, 2020. The ad hoc Committee is scheduled to make final submissions to Parliament in March 2020. If passed, this Bill may allow for the expropriation of land without compensation in South Africa under certain circumstances.

Background

On December 6, 2019 the Ad Hoc Committee established by Parliament published a draft Bill to amend the Constitution of the Republic of South Africa, to allow for the expropriation of land without compensation for the purposes of land reform. The draft Bill may be found on the following link, https://www.parliament.gov.za/storage/app/media/CommitteeNotices/2019/december/06-12-2019/Draft_advertised.pdf. Written submissions on the Draft Bill will be accepted until January 31, 2020. Submissions and enquiries on the draft Bill must be directed to Mr V Ramaano, 3rd Floor, 90 Plein Street, Cape Town, 8000 or emailed to section25@parliament.gov.za. If passed, this Bill may allow for the expropriation of land without compensation in South Africa under certain circumstances.

The process that has led to the publishing of the draft Bill cited above, began on February 26, 2018 when the South African Parliament passed a motion to begin a process to amend Section 25 of the Constitution to allow for the expropriation of land without compensation. A Constitutional Review Committee was mandated to undertake a process of consultation to determine whether to amend Section 25 of the Constitution and how it will be done. Following a review of public submissions and consultations, the Constitutional Review Committee in November 2018 recommended to Parliament that the constitution be amended to allow the expropriation of land without compensation in South Africa. According to the Constitutional Review Committee, the basis of the recommendation was 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. The report of the Constitutional Review Committee on the recommendation and possible review of Section 25 of the Constitution, can be found on the following link, <https://pmg.org.za/taled-committee-report/3607/>.

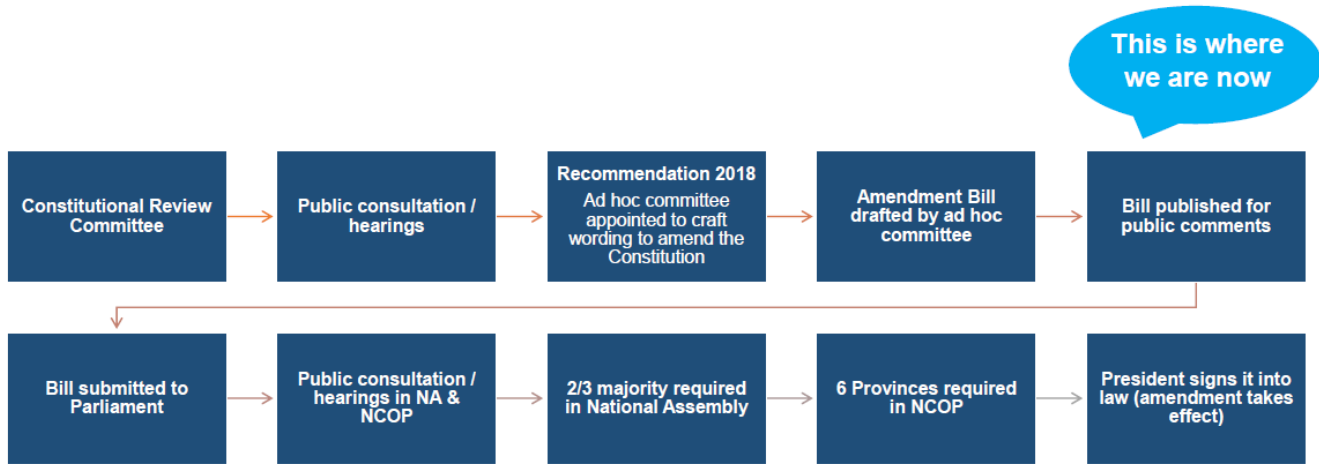
In December 2018, Parliament through a majority vote, approved the report of the Constitutional Review Committee, and agreed to proceed with the process of amending section 25 of the Constitution to allow for land expropriation without compensation. An ad hoc Committee was established by Parliament to undertake the work in amending section 25 of the Constitution in order to make explicit that which is implicit in the Constitution, with regards to expropriation of land without compensation. The ad hoc Committee commenced its meetings and consultations in February 2019. Detailed background on the ad hoc Committee can be found on the following link, <https://pmg.org.za/taled-committee-report/3713/>. After reviewing comments, the ad hoc Committee is scheduled to make final submissions to Parliament in March 2020.

Expected Delays in the Process

The finalization of the constitutional amendments to expropriate land without compensation is expected to be long-drawn-out process. **Figure 1** shows the process that South Africa is following, and where the process currently stands. The deadline for the submission of public comments is January 31, 2020. Thereafter, the ad hoc Committee may make any necessary amendments based on the public

comments prior to submitting the Bill to Parliament by March 30, 2020. The previous public consultation process took much longer than expected due to the overwhelming number of comments submitted. Post similarly expects that a huge amount of comments will be submitted on the recently published draft Bill, which may delay the process beyond March 30, 2020.

Figure 1: Parliament Process: There is Still a Long Way Ahead



Source: Agricultural Business Chamber (Agbiz)

Further delays in the process are expected after the Bill is submitted to Parliament. As the Bill will seek to amend a section of the Bill of Rights, at least two thirds of National Assembly Members of Parliament must support it. This may be a challenge because, fundamentally, there is no unanimous view about the land expropriation without compensation policy amongst South Africa’s leading political parties, none of whom have a two-thirds majority on their own: African National Congress (ANC), Economic Freedom Fighters (EFF) and Democratic Alliance (DA). Should at least two thirds of National Assembly Members of Parliament support the Amendment Bill, at least six of the nine provinces must also vote in support of the proposed Bill. Finally, the President also has to sign it into law prior to the Bill being implemented.

Post Comments

South Africa has moved beyond considering whether section 25 of the Constitution should be amended to allow expropriation without compensation and has published a draft Bill that proposes wording to be used to amend this section. Based on the current discussions and proposed amendments, several stakeholders including the Chairman of the ad hoc Committee, expect that the Bill will be highly contested and may possibly end up in courts. Post encourages U.S. stakeholders that wish to comment on the [draft Bill](#) to make written submissions by no later than January 31, 2020 to Mr V Ramaano, 3rd Floor, 90 Plein Street, Cape Town, 8000 or emailed to section25@parliament.gov.za.

From an agricultural perspective, concerns have been raised that expropriating land without compensation may threaten widely accepted property rights principles and could impact investments

into the sector and agricultural production. In addition, there is uncertainty as to the impact of expropriating land without compensation to the banking sector believed to have advanced at least R180 Billion (US\$12 Billion) in debt or secured loans to the agriculture sector based on land titles as collateral. The impact of expropriating land without compensation to U.S. trade remains still uncertain at this stage.

Post will continue to monitor the progress on the matter, specifically how it may impact the South African agricultural sector and bilateral trade.

Attachments:

No Attachments.