**DraftReport of the *Ad Hoc* Committee to Initiate and Introduce Legislation Amending Section 25 of the Constitution, dated 8 September 2021**

*(This report should be read together with the committee’s reports on public participation. See ATC No 57 – 2021, p 4 and ATC No……………).*

1. On 25 July 2019, the National Assembly noted that in the Fifth Parliament, the National Assembly and National Council of Provinces adopted a report of the Constitutional Review Committee on the Review of section 25 of the Constitution, 1996 (ATC, 15 November 2018, p 4) recommending that Parliament –
2. Amends section 25 of the Constitution 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; and
3. Urgently establish a mechanism to effect the necessary amendment to the relevant part of section 25 of the Constitution.
4. The National Assembly further noted that an *ad hoc* committee was established to this effect but could not complete its task by the time of the dissolution of the Fifth Parliament and that the *ad hoc* committee recommended that the matter be concluded in the Sixth Parliament (ATC, 15 March 2019, p 92). The National Assembly resolved to establish an *ad hoc* committee in terms of Rule 253 to:
5. Initiate and introduce legislation amending section 25 of the Constitution;
6. Have regard to the work done and recommendations as contained in the reports of the Constitutional Review Committee and the previous *ad hoc* committee on the amendment of section 25 of the Constitution;
7. Consist of 11 voting members of the Assembly, as follows: African National Congress 6, Democratic Alliance 2, Economic Freedom Fighters 1 and other parties 2;
8. Further consist of 14 non-voting members of the Assembly, as follows: African National Congress 2, Democratic Alliance 1, Economic Freedom Fighters 1 and other parties 10; and
9. Exercise those powers as set out in Rule 167 that may assist it in carrying out its task.
10. The *Ad Hoc* Committee to Initiate and Introduce Legislation Amending Section 25 of the Constitution (committee) was expected to report to the National Assembly on 31 March 2020. However, due to the magnitude of the task, the outbreak of Covid-19, the declaration of the National State of Disaster and the promulgation of Regulations placing the country into lockdown, the committee could not complete its task before 31 March 2020. Further, due to significant public interest and inputs into the draft Bill, as well as further amendments based on public inputs, the deadline was extended several times and the committee is expected to table its final report on or before 10 September 2021.
11. The committee convened its first meeting on 5 September 2019 and elected Dr Mathole Motshekga as its Chairperson. The committee was briefed on the work of the Constitutional Review Committee and the *ad hoc* committee that was established in the Fifth Parliament. Parliamentary Legal Services took the committee through the process of initiating a committee bill amending the Constitution for introduction. As part of this process, the Department of Trade and Industry briefed the committee on the impact of expropriation without compensation, specifically related to land owned by foreigners, on Bilateral Investment Treaties. On 6 November 2019, the committee also held a Constitutional Dialogue on Land Ownership. These initiatives, amongst others, informed the policy choices that underpinned the Draft Constitution Eighteenth Amendment Bill.
12. On 3 December 2019, Parliamentary Legal Services briefed the committee on a Draft Constitution Eighteenth Amendment Bill. On 5 December 2019, different political parties made submissions in a committee meeting. The committee understood and agreed that a draft Bill at that stage would have to be agreed upon in order to trigger the public process of commenting on the Bill. It was understood that the initial draft Bill constituted a compromise in that it did not address all the issues the Committee may want the Bill to address. On 13 December 2019, and in compliance with Rule 276(1)(b) and section 74(5) of the Constitution, the draft bill was published in the *Government Gazette* (number 42902) for public comments. The closing date for public comments was 31 January 2020 but was later extended to 29 February 2020. The draft bill was also sent to provincial legislatures and referred to the National House of Traditional Leaders for comments (ATC No 119–2019). No inputs were received from provincial legislatures. The draft bill was also advertised in various newspapers and in all official languages for public input. The following departments were invited to comment on the Draft Bill: Justice and Constitutional Development, Minerals and Energy, Agriculture, Land Reform and Rural Development and Public Works and Infrastructure.
13. Given the importance of the land question and the process of amending the Constitution, the committee resolved to conduct public hearings in all provinces. The committee established two groups so as to expedite the process of public consultation. All parties represented in the committee were allowed to have a representative in both groups. Public hearings commenced on 28 February 2020 but had to be postponed in March 2020 due to the outbreak of the corona virus pandemic. A public hearing session scheduled for 25 October 2020 in Polokwane had to be cancelled as a result of disruptions by some members of the public. The session was rescheduled and took place smoothly on 7 November 2020. The committee also listened to oral input from stakeholders who had requested an opportunity to address it. The list of organizations that made oral input and details of the public hearings are contained in the committee’s Report on Public Participation (see ATC No 57- 2021).
14. The committee deliberated extensively on the scope of its mandate so as to ensure that it stayed within the Rules of the National Assembly. The committee was in agreement that its mandate was to amend section 25 so as to explicitly provide for expropriation of land without compensation as a legitimate option for land reform but differed on whether it was limited to the Draft Bill as published or it could amend other provisions of section 25 as per the public hearing submissions. It was argued that section 25 had to be read and interpreted as a whole. Therefore, the committee could amend other sections as per its mandate.
15. The committee noted that although it had not advertised the whole section for comments, members of the public had submitted comments on the whole section. It was argued that the committee could not simply ignore such submissions. A contrary view was that the committee required permission of the Assembly before it could amend other sections not listed in the Bill.
16. On 16 April 2021, the committee deliberated on its Report on Public Participation, oral inputs by stakeholders and views expressed during provincial public hearings. Informed by these inputs, and in accordance with Rule 274(2), the committee revised the Draft Constitution Eighteenth Amendment (Revised Draft Bill) and proposed further amendments to section 25 of the Constitution. The Revised Draft Bill was also advertised for public comments (see Second Report on Public Participation: ATC No………. 2021) and referred to the National House of Traditional and Khoi-San Leaders for comments (ATC 98-2021).
17. On 26 August 2021, Committee Section presented a summary of comments/ report on public input on the Revised Draft Constitution Eighteenth Amendment Bill. At the request of the Management Committee, Parliamentary Legal Services also presented possible amendments to the Revised Draft Bill based on comments received from the public. Members of the committee were given an opportunity to consult with their parties before any decision could be taken on the proposed amendments. On 1 September 2021, the committee deliberated on the Revised Draft Bill and proposed amendments and provided final drafting instructions to the Parliamentary Legal Services. The committee met on 3 September and adopted the following amendments to the 18th Constitution Amendment Bill as put out for public comment as follows: with the Democratic Alliance and Freedom Front Plus dissenting:

i. Section 25(2)(b) is amended to read “*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 of land reform as contemplated in subsection (8), the amount of compensation may be nil.’’.* The Ad Hoc Committee indicated that proposed amendments under this subsection (2) on *‘nil compensation’* for expropriated land and any improvements thereon must be read concurrently with subsection (3) of Section 25, wherein the clause makes provision for circumstances under which expropriation of land with nil compensation can take place.

ii. Section 25(3) is amended to read *“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’’.* This proposed amendment is read in conjunction with subsection 2 of Section 25.

iii. New Insertion (3A) is proposed following subsection 3 of Section 25 to read as thus ‘‘*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.’’*

iv. Section 25 (4) is amended with an insertion (4A) to read *“The land is the common heritage of all citizens that the state must safeguard for future generations”.*

v. Section 25 (5) reads “*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.’’*.

The Ad Hoc Committee made no amendments to subsections (1); (6); (7); (8) and (9).

1. Having complied with Rules of the National Assembly and the Constitution of the Republic of South Africa and having considered the Draft Constitution Eighteenth Amendment Bill, the *ad hoc* committee introduces the Constitution Eighteenth Amendment Bill in terms of Rule 297.

(Relevant and required documents, specifically written comments contemplated in section 74(6), to be submitted to the Speaker of the National Assembly and Chairperson of the National Council of Provinces).

Report to be considered.