



[Land Expropriation Without Compensation and Land Speculation](#)

The [public has until end of January 2020](#) to comment on the “[Constitution Eighteenth Amendment Bill](#)” that makes it explicit that “*where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil.*”

As the Constitution stands at the moment, without any amendments, it does not prevent courts deciding that compensation for expropriation should be nil (or less than market value or any other amount). The wording in the Constitution Eighteenth Amendment Bill simply makes this explicit. The Bill calls on government to set out, in legislation, the “*specific circumstances where a court may determine that the amount of compensation is nil*”.

As always, the ‘devil’ is in the details. These details can be found in the [Draft Expropriation Bill of 2019](#). that actually came out more than a year ago in December 2018, where it lists, in section 12.3, five instances where compensation could be nil. Generally only one of these instances is controversial. Section 12.3.b states that one of the instances where nil compensation may be just and equitable is “*where the land is held for purely speculative purposes.*” The controversy becomes should speculative land be subject to nil compensation, who decides and how do they decide if the land is being held for purely speculative purposes.

Land speculation is where people get land ‘cheaply’ with the intention of holding on to the land for a period of time until they can sell it at a later date at a higher price and make a nice profit. See [here](#) for Wikipedia definition of speculation and [here](#) for a few other people’s views on what land speculation is. This is what many property developers, investment companies and property owners do all the time so it is bound to be very difficult to draw the line as to when is land held (kept) “*for purely speculative purposes*” and when is land speculation just one of the reasons for holding land. For example, if someone owns a piece of land on the edge of an expanding city to use it to graze cattle until such time as they decide to sell it at large profit when developers are approaching them to use it to develop a new shopping centre, can this land be expropriated at nil compensation.

The other four, far less controversial, instances listed in section 12.3 where it is suggested that compensation can be nil are: (a) *Where the land is occupied or used by a labour tenant, as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); ... (c) where the land is owned by a state-owned corporation or other state-owned entity; (d) where the owner of the land has abandoned the land; (e) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.*

The debate around expropriation without compensation should not focus on the Constitution

Eighteenth Amendment Bill. We all need to familiarise ourselves much more on the debates around the instances where compensation can be nil, that is addressed in the Land Expropriation Bill. Government needs to update us on what progress it is being made in finalising a new Expropriation Bill so we can have meaningful discussions around when is it just and equitable for compensation to be nil.