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**To:** Joint Constitutional Review Committee  
**For attention:** Pat Jayiya  
Per e-mail: [pjayiya@parliament.gov.za](mailto:pjayiya@parliament.gov.za)

**Re:** Review of section 25 of the Constitution

**Date:** 14 May 2018

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Dear Ms Jayiya,

1. We refer to the call for **written public submissions** regarding this Committee's enquiry into **whether there should be an amendment of section 25 of Constitution** (the "*property clause*") to make it possible for the State to expropriate land in the public interest without compensation.
2. *Freedom of Religion South Africa (FOR SA)* is a non-profit organisation working to protect and promote the constitutional right to religious freedom in South Africa, and representing over 6 million people across denominations, churches and different faith groups.
3. As such, and because various members of our constituency are land owners and stand potentially to be affected by an amendment of the property clause, we (and indeed our constituency) have a direct interest in this matter.
4. The property clause reads as follows at present:

*"(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*

*(2) Property may be expropriated only in terms of law of general application-*

*(a) for a public purpose or in the public interest; and*

*(b) 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.*

(3) The amount of the compensation and the time and manner of 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, including-

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property;
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.

(4) For the purposes of this section-

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

(b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).

(9) Parliament must enact the legislation referred to in subsection (6).” [Own emphasis added.]

5. Given that the only requirement pertaining to compensation is that it must be “just and equitable”, FOR SA is of the opinion that this does not rule out the possibility of a R0-00 rate being given as compensation if that is what is deemed just and equitable.
6. Considering the above, FOR SA submits – as our provisional view - that an amendment is not required to allow expropriation at a R0-00 compensation rate.
7. We thus adopt a holding pattern at this stage, but given the immense possible impact of an amendment on our constituency, FOR SA would like to remain informed of, and involved in, the discussions and process concerning this issue.

8. We trust that you find these submissions useful, and would appreciate the **opportunity to make verbal submissions** regarding the Bill, if and/or when such opportunity presents itself.

Kind regards,



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**Adv Nadene Badenhorst**

Legal Counsel

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**THE END.**

