

LAND AS A "NATIONAL ASSET" UNDER THE CONSTITUTION: THE SYSTEM CHANGE ENVISAGED BY THE 2011 GREEN PAPER ON LAND POLICY AND WHAT THIS MEANS FOR PROPERTY LAW UNDER THE CONSTITUTION

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SUMMARY

This paper takes a close look at some of the main tenets set out in the Department of Rural Development and Land Reform's *Green Paper on Land Reform* of 2011, specifically those that have a bearing on the creation of a new framework for land law. The purpose is to advance some suggestions as to how new statutory interventions can avoid being contested for unconstitutionality. The analysis focuses on the *Green Paper's* notion of land as a "national asset", questioning the meaning and implications of such a notion against the debate about nationalisation of important resources. In this context, the paper is critical of the perceived tendency to introduce reforms for the mere sake of political expediency. The guidelines for state interventions with property rights that would pass constitutional muster are deduced from (mainly) the decision of *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* 2002 4 SA 768 (CC).

KEYWORDS: Green Paper on Land Reform; Land Reform; Land as National Asset; Nationalisation; Property Rights; Property Law; Constitutional Law; Political Expediency.

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