



Centre for
**CONSTITUTIONAL
RIGHTS**

**CONCISE SUBMISSION ON THE PROMOTION
AND PROTECTION OF INVESTMENT BILL
[B18 -2015]**

Ms Phephelaphi Dube
Portfolio Committee on Trade and Industry
9 September 2015, Cape Town

Centre for Constitutional Rights

- Unit of FW de Klerk Foundation – a non-profit organisation dedicated to upholding the Constitution, the rule of law and constitutional democracy.
- Seeks to promote all values, rights and principles provided for in the Constitution on behalf of everyone.
- Monitors developments, including actions, policy and draft legislation, that might affect the Constitution and the values, rights or principles provided therein.
- Informs people and organisations of their constitutional rights and assists them in claiming those rights.



Contents of Submission

- Clause 11: Right to Regulate
- Clause 9: Protection of Property
- Other considerations

Clause 11: Right to Regulate

- Government/organ of state may take unspecified measures without any limits;
- This provision is vague – and does not provide guidance on the exercise of Executive power;
- Provisions open to abuse.
- Recommendation: Narrow the scope of application to specific investment concerns.

Clause 9: Protection of Property

- Inadequate protection of property rights;
- Vagueness of measures that government can take, renders provision arbitrary contravening section 25(1) of the Constitution “*No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property*”.
- Recommendation: Delineate reach of State’s powers.

Other Considerations

- South Africa's obligations in terms of the *Southern African Development Community Protocol on Finance and Investment, 2006*.
- Title of the Bill is misleading – Bill may result in less protection to foreign investors than they enjoyed in terms of various Bilateral Investment Treaties.

Thank you

Phephelaphi Dube

Legal Officer

www.cfcr.org.za / @theCFCR

Promoting and upholding the Constitution



Centre for
CONSTITUTIONAL
RIGHTS