

EXPROPRIATION BILL-

Written Submission



BY THE SANKARA POLICY AND POLITICAL SCHOOL (SPPS)

The Sankara Policy and political School (SPPS) is a newly formed institute that aims to agitate for the realisation of black people's liberation aspiration.

It seeks to use the civil society space to educate and advocate for freedom centred on black people's agency, this is to be informed by clear theory and action.

The challenges facing the sector can be summarised in short in the following manner:

1. All Government land reform programmes are trapped in colonial, neo-colonial and market logic which makes them anti land redistribution.
2. Our people are without any means to access land
3. There is urban landless and rural landless which affect over 22 million black people
4. It would take more than 100 years to redistribution only 30% of the land.
5. Between 1994 and 2004, more than a million farm workers had been evicted from land.
6. After 20 years only less 8% of the land has been bought back at the staggering R50 billion rand!
7. Up to now there has been no political will to return land to our people.
8. Any process of land redistribution that is dependent on paying compensation is politically flawed, economically unrealistic and morally reprehensible.
9. Willing buyer willing seller logic has blocked land return to the people.
10. Courage needed to place land outside the logic of the market and see it in historic terms.

The main question that needs to be asked is what is the objective of this Bill? National consensus has long been achieved confirmed by the numerous conferences of the ruling party, which correctly has defined the South African Land Reform programme as driven by the "Willing buyer-willing seller" principle. All those has even a marginal interest in the land question have said such a programme has no basis in South Africa, because all of the land in this country is stolen property. Those who have land have gained it as a result of theft and violence and have no right to it. This truth is therefore offended by the policy process that insists that stolen land must be bought from those who benefited from illegality.

The land reform programme of South Africa post 1994 can be correctly be characterised as perpetuating illegality which was first started in 1652 with the arrival of the European settlers. So there is no basis in in history, morality, economics or politics to buy the land back.

Up to now, the big question facing our society has been how to effect land redistribution in an ethical fashion that would be true to the historical questions of land theft? How do we give reparation and heal the scars of society?

Section 25 of the Constitution gives with one hand and takes with the other. It says two things at the same time- it protects colonial property relations and at the same time it proves for land redistribution. This leaves us with the question, what does this section actually do? Correctly, after 20 years it can now be said without hesitation that it in fact property colonial land theft by giving it legitimacy in law. And the whole argument turns on the phrase "just and equitable compensation". The Section says, there can be expropriation

subject to this iron law of the market. There has been some debate as to whether there can be any serious application of that provision to circumvent the market. Those who argue that the section does not rely on the market, fail to appreciate that in the final analyses and on common law and international jurisprudence within our globalisation era which is overdetermined by the logic of the market there section as it stands is open to defacto only one interpretation, that is the predominately the market value.

The implication of such is that at best the South Africa expropriation process today is equivalent of merely forced sales at market value. Already more than three processes have indicated how the court would interpret "just and equitable". First judge Geldenhuys in the land claims court tried to give interpretation to the clause and came to some complicated calculations which didn't solve the problem. Later the deputy judge president of the Constitutional Court, has decided to rely on "inflation" to calculate compensation for those who have lost property and are beneficiaries of the Restitution process. Moseneke's determination is open to accusation of racism, because white land owners are never confronted with valuation of their property based on CPI index. It's an established principle that property is valued on the CPI, so what was the logic behind this weird logic only gods knows. The third firm indication that "just and equitable" within the current frame work would mean, "market value", was expressed in the Zimbabwe land expropriation matter which was first decided by the SADC Tribunal and then went all the way into the South African Constitutional Court. On that case the Judge president led the bench in concluding that compensation must be paid whenever there is expropriation and this led to the a judgement which forced the property of the Zimbabwean state to be sold to pay compensation to the white farmer who lost property.

The question confronting this Bill is whether it is able to overcome these challenges and lead to a new dispensation in terms of the land question. In other words, will this Bill if it were to become law lead to a speedy, efficiently, cost effective redress of the land theft? In other words does the Bill do the following:

1. End the willing buyer willing seller policy and practice?
2. Does the return land without having to pay for it since its stolen property?
3. Does the Bill ensure land will be in hands of the landless?
4. Does the bill resolved the what "just and equitable compensation" means?

Unfortunately in all the above, the Bill is more than inadequate. The Bill is timid, vague and repeat what we know. Already the conditions for expropriation repeated in the bill are covered in section 25 of the Constitution. The Bill does not take forward the process defined by the section and as we know already highly compromised. The Bill doesn't even seek to put emphasis on the one reading of the section, which is that historical redress must trump any other consideration. Worse the Bill does not locate the land question in history and in the logic of land theft so that land expropriation is undertaken within a frame work that would ensure decolonisation and redress.

After 2 years, there is no sign of political will, courage and clarity of purpose. With this bill in its current form, land redistribution is again returned to the mercy of beneficiaries land theft and the market.

What is proposed?

1. That the section be amended to be explicit on land redistribution for historical redress.
2. That it set targets as a constitutional imperative, land be redistributed in the next five years!(2015 – 2020).
3. That there be a clause that prevent state from forcibly removing people from land (land occupations be dealt with a political matter which doesn't not involve the police).
4. That there be a moratorium on evictions on farms with immediate effect
5. That section 25, be replaced completely with the following words, "all land shall be expropriated without compensations, to deserving applicants".
6. That the section furthermore, outline a process where land ceilings shall be effected in accordance with soil capacity of each of the regions and provinces.
7. The subsection of the amended section should declare that all land a national assets which cannot be contaminated by the dictates of market and profits.
8. That immediately, values of morgages be adjusted to a value that excludes the market in the housing price because land is offered to all for free.

