



# Expropriation Without Compensation

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## About the Institute

The JL Dube Institute was formed with the aim of carrying forward the ideals, values and aspirations of the legendary statesman, Dr John Langalibalele Dube (1871-1946).

- His activism centred mainly around opposition to racially based legislation and practices that led to the dispossession of African Natives by European Settlers during that period.
- Dr. Dube was the first leader to respond to the enactment of the Natives Land Act no. 27 of 1913.
- He made representations to the Queen of England regarding the plight of the African people as a result of the dispossession of our land by European Settlers.



## About the Institute.....Continued/

Since its formation in 2014, the JLD Institute has been appointed on the panel of researchers of the Commission for Restitution of Land Rights to assist with the researching of the 80,000 land claims that were lodged by the cut-off date of 31 December 1998.

- To date the Institute has researched over 300 land claims in the KZN, Eastern Cape, Western Cape, North-West and Mpumalanga provinces.
- It has interviewed over 3000 claimants, which consist of individuals, families and whole communities.
- Over 90% of the testimonies collected from claimants confirmed that their fertile land was taken (expropriated) by Europeans without any form of compensation.

## Typical Community Interviews Conducted



The Institute therefore, regards itself as ideally placed and morally bound to advance well informed opinions on the “*Expropriation without Compensation*” debate from a purely research perspective.



# Background

- The issue of land rights, specifically the right to restitution and redistribution is an important issue of justice and human rights; which must be urgently addressed.
- However, after several decades of attempting land reform, there has been little to show in the form of progress.
- Complex issues have arisen and there is enough evidence to propel a conviction that a review of legislation is necessary, with the intention to beef up the applicable legislation in the interests of expediting the pace of land reform.
- Government and civil society organisations have wrestled with complex of issues relating to land reform and land restitution in particular; and it is clear that the problems are deep and may result in a general feeling that the system is failing the nation in its promise of redress.



## Background...Cont./

- The Government should shift its focus from the current overemphasis on private property rights at the expense of the State's social responsibilities for radical social and economic transformation.
- The Freedom Charter, the Constitution and the National Development Plan (NDP) embody a vision of a South Africa in which development is progressive and inclusive. Poverty, unemployment and inequality currently affecting the dispossessed and poorest of the poor was **deliberately** engineered by the colonial and apartheid governments through expropriation of their land and livestock without compensation.
- The above were achieved through the application of various pieces of draconian racial laws
- Likewise, a case is being made for Land Reform (i.e. Restitution, Redistribution and Land Tenure Reform) to take place through the Constitution and the law.
- Land Reform should unapologetically include Expropriation Without Compensation (EWC), but through a legislative framework that is transparent and fair.



# Understanding Expropriation in the South African Context

- The concept of Expropriation and hence the Expropriation Bill (EB) should be understood to mean the provision of the means for Government to acquire property needed for public purpose, or in the interest of the public, as well as to provide fair and transparent guidelines on how to do so.
- “Property” in this instance, is not limited only to land, but includes land reform and restitution programmes, infrastructure development projects such as dams, roads, and human settlement.
- “Public Interest” includes the nation’s commitment to land reform, and to reforms that bring about equitable access to all of South Africa’s natural resources.



# Expropriation and the Constitution

Any action that is taken to correct the wrongs of the past must be informed by a proper understanding of the scheme of section 25 of the Constitution. At face value it may appear to protect property rights but :

- It makes an exception when land is required for public purposes or in the public interest Section 25(2)(a), in which event property may be expropriated. Given our history, the public interest encompasses expropriation of land pursuant to a reasonable land redistribution policy;
- It provides for land redistribution by imposing an obligation on the state to *“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”*.(Section 25(5)).
- It guarantees restoration of land to individuals or communities who were dispossessed of their land as a result of racially discriminatory laws. Restoration of land would seem to require that land taken away must be restored as per section 25 (7).

The issue of compensation in restoring land taken away without compensation does not arise. However, compensation may be payable for improvements to the land but this will depend on the circumstances under which the occupier of the land came to be in possession of the land. These are questions that the Government needs to debate.



# Expropriation in the South African Context

- It is a matter of course that expropriation with compensation has always been heavily skewed in favour of white landowners who had previously acquired their land through generous grants by the colonial and apartheid governments, or through soft loans from the Land Bank.
- **Therefore, the present government would do well to consider determining compensation benchmarks that take into account the manner of acquisition of the properties that are earmarked for expropriation.**
- There are many other instances of expropriation (with or without compensation) that occurred during the apartheid era where the creation of self-governing homelands necessitated the expropriation of land and relocation of both black and white people in the interests of establishing the so-called betterment schemes.
- **Expropriation is, therefore, neither a new nor foreign concept in South Africa's history.** Its application in a transparent and equitable manner in line with the Expropriation Bill, will be the key in fast tracking peaceful social and economic transformation of society for the benefit of all.



# Expropriation Case Studies

The following case studies lend credence to this fact:

- a. Mr. Barras Baker (RLCC reference – KRN6/2/2/E/36/0/0/24) had his farm Sweethome 254 expropriated by the South African Development Trust in 1991 and was paid a sum of R420,000 and R30,000 in compensation
- b. Mr A.H. Harper (RLCC reference – KRN6/2/2/E/16/0/0/156 had his farm Sub 2 of Lot HH Umgodi and Sub 4 of Lot DW No. 8777 expropriated by the South African Development Trust in 1981 and was paid R335,498.
- c. The communities under Chief Dube and Chief Mkhwanazi in Reserve number 10 near Richards Bay, were removed in order to establish the Township of Esikhawini in 1975 which was to be a labour reservoir for the port of Richards Bay. Each of the families were paid a compensation of R36,000 and a township house to rent.
- d. The Abathuyi community's land was expropriated by Tongaat Hullett in the eThekweni Metro. They used to live in the area currently occupied by the Dube Trade Port and the King Shaka International Airport, approximately 35km north of Durban. The only compensation paid was 11 matchbox houses for Chief Paul Chili and his family.



## Recommended Approach to Expropriation

- a. The State should identify all unused State land that is not earmarked for particular developments. There are large tracts of land that can immediately be re- distributed for this purpose.
- b. Private land can be expropriated in terms of the forthcoming Expropriation Act for redistribution in the public interest without having to go through the limitations of the Restitution of Land Rights Act.
- c. The State should also consider the expropriation of land that is owned by absentee landowners who are holding it purely for speculation purposes.
- d. The State should also consider expropriating land that was acquired by landowners with financial assistance of the State or under apartheid laws, so that clear precedents are created to limit the compensation paid out when taking into account all relevant factors.

**All of the above can be achieved through the application of section 25(5) of the Constitution and the soon to be finalised Expropriation Act.**



## Government Commitment

The government should embrace its moral obligation to promote equal access to land and property rights to all our citizens. The benefits to the country in terms of employment creation, poverty reduction as well as skills and capacity building will be immeasurable.

- Yes, it will require some sacrifice from the privileged, which we hope, will be regarded in a spirit of reconciliation, patriotism and nation building, as well as
- Commitment from the previously marginalised to intensify their efforts to reduce the triple scourge of unemployment, inequality and poverty.
- Yes, it will also require time, effort and government investment in order to empower the previously disadvantaged and to achieve the goals of the National Development Plan.



## Conclusion

- In light of the above, the JL Dube Institute is of the opinion that **Expropriation of property should definitely be implemented for public purpose and in the public interest.** This is adequately provided for in Sections 25 (2), (4) and (5) of the Constitution.
- Section 25(3) provides for the **enactment of legislation which will standardize a “sliding scale” from 0% to 100% market value compensation,** based on various factors to be considered in determining just and equitable compensation, reflecting an equitable balance between public interest and the interest of those affected.
- Therefore, **Expropriation** without compensation is supported, a **legislation that will strengthen the current Section 25,(2)(4)(5) is needed.** The lawmakers must adopt greater urgency in strengthening the Expropriation Bill to allow for Expropriation without Compensation.
- The truest test for government now is to confront the original sin of land theft by whites.



Thank You

