

**Example of textual analysis in submissions on the Expropriation Bill dated 1-8 January 2021**

**Useful to deal with: 1. Repetitions in submissions of individuals and organizations;**

**2. Repetitive terms and fears across submissions from different organizations.**

**3. To identify the main feature of electronic submissions on this bill to date.**

**Explaining repetitions in submissions - prepared by the Content Advisor, Portfolio Committee on Public Works, for the meeting of 3 February 2021.**

To show a feature of repetitions we use the submissions from 1 January to 8 January 2021: Total submissions - 102

**Four terms repetitive in submissions over this week:**

* Strongly disagree with the repealment of the existing Expropriation Act 63 of 1975 – **177**
* I believe that private ownership is the core of a healthy economy and community. I do not agree that my belongings, for which I have worked hard, might be expropriated by the state – **95**
* Private ownership should be protected by the law – **95**
* I do not agree that there should be instances where nil compensation is just and equitable – **174**

Note also that the organizations mentioned, provide links from their main sites to WhatsApp, twitter, Facebook, and LinkedIn to further increase the number of submissions and repetition of messages.

**The main feature of electronic submissions on legislation is that we get a high number of submissions, but a lower number of people participating. We also have a lower diversity of views on the piece of legislation under review.**

This trend is also noted in the flood of submissions since the weekend of 29 January. At this stage, the deadline for submissions was looming, and individuals started flooding the email box with repetitive submissions. This increased number of submissions meant that organizations started repeating the same messages, and the same individuals started posting from the websites of a number of organizations. These are organizations such as Dear SA, SAIRR, TLU, FSA, and AfriForum. The latter also used an additional site called onteiening.co.za. Sakeliga as AfriBusiness also had individuals posting messages that were similar to those highlighting the matter of changes to the Section 25 of the Constitution to enable for expropriation for nil compensation.

Bulk email prepared by the **Transvaal Landbou Unie (TLU)** posted by private individuals:

My name is ……………………… and I wish to comment on the suggested changes to the Expropriation Bill.  
I strongly disagree with the repealment of the existing Expropriation Act 63 of 1975 to give state organs the power to expropriate property.   
I do not agree that there should be instances where nil compensation is just and equitable. I believe that private ownership is the core of a healthy economy and community. I do not agree that my belongings, for which I have worked hard, might be expropriated by the state.  
Private ownership should be protected by the law.   
I strongly disagree with the repealment of the existing Expropriation Act 63 of 1975 to give state organs the power to expropriate property. I do not agree that there should be instances where nil compensation is just and equitable.

Bulk email prepared by the **SA Institute of Race Relations (SA IRR)** posted by private individuals:

I, ………………….. hereby make the following individual and unique submission to the to the Portfolio Committee on Public Works and Infrastructure on the Expropriation Bill 2020 [B23-2020]:

Submission to the Portfolio Committee on Public Works and Infrastructure on the Expropriation Bill of 2020 [B23-2020]

1. The enormous importance of the Expropriation Bill to all South Africans

If the Expropriation Bill of 2020 (the Bill) is enacted into law in its current form, it will allow the government to seize ownership or control of both land and many other assets. Homes, pensions, business premises, mining rights, shares, and unit trusts will all fall within the Bill’s definition of ‘property’, making them vulnerable to expropriation for ‘nil’ or inadequate compensation.

Contrary to government reassurances, the Bill will not be limited to land reform. Nor will it solve land reform problems, which stem largely from inefficiency, corruption, and an absence of secure ownership. Instead, the Bill will threaten the property rights of all South Africans: from the 9.5 million people with home ownership to the roughly 18 million with customary law plots, and the estimated 17 million who belong to pension funds. It will also harm all business owners, both large and small. At the same time, the economic fall-out from the Bill will further hurt the 11 million individuals now unemployed by reducing investment, limiting growth, and stalling post-lockdown recovery.

2 Particularly damaging provisions in the Bill

Under the Bill, ‘nil’ compensation may be paid for land expropriations in five listed circumstances. This means, for example, that no compensation may be paid to owners who have lost control to land invaders or building hijackers. However, the circumstances in which ‘nil’ compensation may be paid are expressly ‘not limited’ to the five set out in the Bill – so no one can tell how much more widely ‘nil’ compensation may in time extend.

Nil compensation will also apply should the government later take custodianship of all land in the country, as the Economic Freedom Fighters (EFF) and the African National Congress (ANC) have long desired. No compensation will then be payable because of the way in which the Bill defines ‘expropriation’. This definition draws a technical, artificial, and unconstitutional distinction between the taking of ownership by the state – which counts as an expropriation requiring ‘just’ compensation – and the state’s assumption of custodianship, which does not.

The Bill’s procedures for expropriation are heavily skewed in favour of the state. All ‘expropriating authorities’ (which will include all provincial premiers and municipalities) must begin by negotiating with owners, investigating the properties to be taken, and issuing notices of their intention to expropriate. Objections from owners must be considered, but need not be answered.

Once it has taken these preliminary steps, an expropriating authority may serve the owner with a notice of expropriation. Under this notice, both the ownership and the right to possess the property will automatically pass to the expropriating authority on specified dates. These dates could be set very soon: within a week or fortnight of the notice being received.

The compensation, if any, that has been offered is supposed to be paid when the expropriating authority takes possession, but in practice could often be delayed. An expropriated owner may contest the compensation offered in the courts, but people already reeling from the sudden loss of their homes, business premises, or other assets will generally find it too costly and difficult to litigate. They will also bear the onus of proving that the compensation offered is not enough – and will have to pay much of the expropriating authority’s legal costs, in addition to their own, if they fail to convince the courts of this.

Mortgage bonds on expropriated houses or other properties will automatically terminate on the date when ownership passes to the state. However, expropriated owners must still pay off their outstanding debts, despite having lost their assets to the government. Any compensation payable must thus be apportioned between owners and banks, as the Bill provides, with owners responsible for remaining shortfalls.

3. Enormous likely economic damage from the Bill

South Africa’s economy is already reeling from the impact of prolonged Covid-19 lockdowns. Some 2 million jobs have been lost in the past year, the budget deficit is expected to exceed 15% of GDP, the government is having to borrow some R2.2bn a day to help fund its (mainly consumption) spending, and a sovereign debt default cannot be ruled out.

The country urgently needs an upsurge in foreign and local investment to jumpstart growth, expand employment, and quicken its economic recovery. But this will not be possible under the Bill, which – contrary to the ANC’s own 54th national conference resolution – is sure to destabilise the agricultural sector, endanger food security, and undermine economic growth. It will also erode business confidence, restrict investment, constrain tax revenues, and add to an already unsustainable burden of public debt.

4. The unconstitutionality of the Bill

The Bill contradicts Section 25 of the Constitution (the property clause), which requires ‘just and equitable’ compensation on all expropriations, including any assumption of custodianship by the state. Section 25 further demands a prior court order confirming the validity of any expropriation or other taking before it is implemented.

The Bill is also inconsistent with other provisions in the Bill of Rights, including:

- Section 33, which requires just administrative action, rather than expropriation procedures heavily skewed against the citizen and in favour of the state;

- Section 34, which gives everyone a right of access to court, which may not be undermined by reverse onus or other unreasonable provisions; and

- Section 26, which requires court orders before people can be evicted from their homes.

5. The right way forward – a better alternative

The current Expropriation Act of 1975 is inconsistent with Section 25 and must be replaced. However, the Bill is just as unconstitutional as the present Act, and needs to be jettisoned in favour of a better alternative. This alternative bill should require just and equitable compensation for every expropriation or other taking, together with damages for consequential losses such as moving costs and lost incomes. Prior court orders confirming the validity of all proposed takings should be mandatory. In addition, an alternative bill should require the payment of all compensation before ownership passes to the state, failing which any notice of expropriation should automatically become invalid. The Expropriation Bill of 2020 is intended to supplement the EWC (expropriation without compensation) constitutional amendment bill, which was rushed through the final stages of the public consultation process so that the Ad Hoc Committee can present it to Parliament for adoption as soon as the ANC and EFF are able to accomplish this.

Since the weekend of 29 January till the first week of February 2021,, the following bulk email appeared. This time tens of thousands of emails appeared in the name of a number of organizations, including the **SA Institute of Race Relations (SA IRR), AfriForum (onteiening.co.za),** and **Free State Agriculture** (**FSA).** These were posted by private individuals:

1. De-facto state control of all property (Clause: 3)
2. Municipalities will have the right to apply and regulate this law (Clause: 1)
3. Expropriation in the public interest is broadly defined and as such implies that any reason can be used for expropriation. (Clause: 1)

**My position on the legislative issue regarding property rights include the following:**

1. I agree with FSA and reject any amendment to section 25 of the Constitution of the Republic of South Africa (No. 108 of 1996) or any current similar bills of which FSA is of the opinion that such amendment may have a negative impact on any form of private property rights. At the same time, any expropriation of any form of private property without compensation is completely rejected.
2. Like FSA, I support future-oriented, economically sustainable agricultural development that aims to pursue the expansion of the agricultural sector as well as food security to the people of South and Southern Africa.
3. I agree with FSA that the state, commercial banks, and other financing institutions must establish financing models that provide full title to all new entrants to agriculture.
4. Property rights must be expanded to be accessible for all South Africans. The Expropriation Bill diminishes and threatens property rights.

**FSA’s five-point action plan:**

1. FSA will take part in drafting the detailed written submission in collaboration with AgriSA and our members.
2. FSA will mobilise the public to stop the Expropriation Bill.
3. FSA will formally present to parliament the submissions from all members of the public that signed this memorandum.
4. FSA will actively take part in the public hearings following the period for written representation.

FSA will oppose any legislation that may have a negative impact on any form of property right, or expropriation of any form of private property without just and equitable compensation.