



National Assembly Portfolio Committee on Public Works and Infrastructure

Expropriation Bill [B23-2020]

24 March 2021

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The Banking Association South Africa



BASA engages with regulators, legislators and stakeholders, on behalf of its members, to help make banking sustainable, profitable and better able to contribute to the social and economic development and transformation of the country.



As an industry association, BASA:

- Acknowledges that current land ownership and food production in South Africa is not sustainable and have their origins in colonialism and apartheid.
- BASA is committed to supporting sustainable land reform that will enhance inclusive economic growth and food security.



Expropriation Bill

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- There are key definitions which have not been clearly defined within the Bill:
 - “*just and equitable*” compensation
 - “*public purpose*”
 - “*public interest*”
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The Bill contains no definition of “*public purpose*” and “*public interest*”.

- Failure to define these terms introduces policy uncertainty.
 - Opens the way for injudicious expropriation. There are more than 230 state entities empowered to expropriate property.
- The Constitution defines property in its broadest sense, the Bill is aligned to this.
 - The definition of property that can be expropriated should be restricted to tangible property. Intellectual property must be protected.



Expropriation Bill

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- In its current form, the Expropriation Bill may discourage local and international investment and result in capital flight should investors incur losses due to expropriation at below market value.
 - Insecure property rights and policy uncertainty retard investment and economic development, critical to tackling unemployment, poverty and inequality.
 - The right to hold property for commercial speculation is legitimate and should only be diluted in exceptional circumstances.
 - The Deeds Registry process should be the standard for the passing of ownership.
 - The passing of ownership through legislative provisions should be reserved for emergency expropriation.
 - There should be an independent social and economic impact assessment of the legislation.

Expropriation Bill

- The Expropriation Bill says “*just and equitable*” compensation may be below market value.
 - It may be appropriate to have a non-exhaustive list of what might constitute “*just and equitable*”, compensation that is below market value.
- The Expropriation Bill should provide sufficient safeguards for property owners to receive “*just and equitable*” compensation in the event of expropriation.
 - Where disputed, expropriation should only occur after court outcomes.
- A below market value compensation would conflict with global norms, including the OECD.
 - Banking crisis often start with the devaluation of land and property that serves as security.
- Under section 9, the Bill seems to exclude registered rights holders (such as mortgagees) in respect of expropriation engagements.
 - It also does not recognise the need for such registered rights to also be expropriated.
 - This represents a material dilution of property rights.



Financial and Economic Stability

- Under the current property and contractual regime, bondholders will remain liable for the full debt on expropriated property
 - Banks must recover their depositor's funds, which have been extended as credit.
- The Banks Act imposes an obligation on banks to value property at market value to meet their capital, solvency and liquidity requirements. Uncertain property values will inhibit a bank's ability to provide credit, where the property serves as security for a loan, and increase the cost of credit, to cover the increased risks to depositor's funds.
- For financial stability, the rights of bondholders needs to be protected in the event of compensation below market value or expropriation without compensation.
 - Cabinet approved the DRDLR: "*Policy framework for land acquisition and land valuation in a land reform context... (18 October 2012)*". It provides for government to guarantee to make-up the difference between expropriation and market value.



Conclusion

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- Land reform can be undertaken in a legal, constitutional, inclusive and sustainable manner, which continues to protect property rights.
 - Land reform must be implemented faster and more effectively, especially in urban areas, where about 1.2 million families live in informal settlements.
 - Crisp and clear legislation is needed to remove policy uncertainty and ensure that the more than 230 state entities, which are empowered to expropriate property, do so in a prudent and balanced manner, aligned to Section 25 of the Constitution.



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