



***The Expropriation Bill B23 of 2020
(the “Expropriation Bill”)***

***ORAL SUBMISSION TO The Portfolio Committee on
Public Works and Infrastructure
DIE AFRIKANERBOND - 8 SEPTEMBER 2021***

By Jan Bosman

Chief Secretary of the Afrikanerbond

Thank you for the opportunity. It is a privilege for any citizen of this country to address a parliamentary portfolio committee and to speak frankly and honestly about issues affecting every South African. I do so today on behalf of the Afrikanerbond.

The presentation will be in English and will gladly answer questions that may arise.

The Afrikanerbond is a member based organisation - promoting Afrikaner interests and with branches all over South Africa. Our organisation is 103 years old. We have learned from mistakes in the past but also some proud achievements and we therefore submit that within our vision “ ***As Afrikaners, we help build the future of South Africa*** we can bring some experience and also some knowledge which we provided in our comments - **In Afrikaans our vision is - As Afrikaners bou ons saam aan die toekoms van Suid-Afrika.**

In our credo it is stated that “our own interests as well as those of our fellow Afrikaners are altogether inseparable from the interests of all other South Africans and every other people in South Africa, and that we will”

It states further:

“Cooperate, where and necessary applicable, with the Authorities and State Institutions on all levels and with all patriotic organisations in the Civil Society to achieve common aims.”

And

WILL determinedly defend the fundamental rights of each individual and every group in this country;

And

“**PROTECT** and promote the nature and essence of a truly democratic political system and resolutely combat any undemocratic aspects and tendencies;”

In AFRIKAANS

DAT ons eie belange en dié van ons mede-Afrikaners onlosmaaklik verbind is aan dié van elke ander Suid-Afrikaner en elke ander volksgroep in Suid-Afrika, en

WAAR nodig en toepaslik, saamwerk met die Owerheid en Staatsinstellings op alle vlakke en met alle patriotiese organisasies in die Burgerlike Samelewing om die gemeenskaplike doelwitte te bereik.

Daarom sal ons

DIE fundamentele regte van elke individu en elke groep in hierdie land met vasberadenheid verdedig;

DIE aard en wese van 'n ware demokratiese staatsbestel beskerm en bevorder en enige ondemokratiese aspekte en neigings met mening bestry; en

It is for this reason that we are here today.

We submitted our full and explanatory comments on 27 February 2021

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The Afrikanerbond is also a member of and the convenor of the ***Ad hoc group for the Protection of Property Rights***- This is an informal grouping of organisations, civil institutions and political parties from across the political and societal spectrum that are opposed to expropriation without compensation and we promote property rights for all South Africans. Many of the individual organisations submitted their comments in the process. Some are making oral representations today.

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2. PRES RAMAPHOSA AND 2018 AND THE NEED FOR LAND REFORM

At the outset, it should be recorded that the Afrikanerbond opposes any form of expropriation without compensation. One of the cornerstones of the Universal Declaration of Human Rights deals with property rights as contained in Article 17:

*(1) **Everyone has the right to own property alone as well as in association with others.***

*(2) **No one shall be arbitrarily deprived of his property.***

Therefore, the Afrikanerbond has serious reservations on the proposed **Expropriation Bill** and at the same time warns that this legislation will have far-reaching negative consequences for all South Africans.

The Afrikanerbond is also convinced that land reform and the increase of access to property **to all** South Africans is of the utmost importance and needs to be addressed **urgently and effectively.**

At the Afrikanerbond Centenary Celebrations on 7 June 2018 in Paarl, President Ramaphosa said amongst others (Quote)

"Let us plan and determine the future of this country together. Let us seek the peace for this torn, tragic, divided South Africa. If well handled, land reform will help bind the nation together and produce benefits for everyone. If badly managed, it will simply re-distribute resentment, damage the economy and destroy social peace. If not undertaken at all, the country will remain divided at its heart." (Unquote)

Any state has the option to expropriate. No one disputes this. It is our view that expropriation when necessary but without compensation should be a measure of last resort. We further maintain that according to freemarket principles the willing buyer willing seller principle must be maintained and that possible problems in the system must be addressed and NOT the principle!

3. SOME SPECIFIC COMMENTS

Why and how this Bill came into being must be questioned and the timing could not have come at the worst possible time - with the economic climate and growing uncertainty by investors. Policy certainty is the foundation for investment and economic growth.

The Bill's purpose as we understand it goes far beyond its objectives and opens the way to a virtually unlimited assault on the property rights of potentially all South Africans.

I quote from the Institute of Race Relations's submission: *"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."*

(Unquote)

The **Expropriation Bill** is in our considered view part of an effort to nationalise private property. It should be emphasised that in our view - any property is under threat - not merely land or agricultural land.

In this regard Prof Elmien du Plessis of NWU wrote earlier this year in News24 - Quote *"The Expropriation Bill is not only applicable to land. It might be useful to know in terms of current law, it is possible to expropriate limited real rights, personal rights, immaterial property rights and so forth. The focus on land is largely because clause 12(3) dealing with nil compensation and the Constitutional Amendment process only focusses on land specifically."*
End Quote

Of bigger importance - This Expropriation Bill is arbitrary and irrational in the sense that it pre-empts the legislative process relating to the draft Constitution Eighteenth Amendment Bill. We have proposed that the Expropriation Bill must be considered once the process relating to the draft Constitution Eighteenth Amendment Bill has come to its final conclusion in the legislative process and the constitutionality **has been judicially reviewed and verified.**

Although the **Expropriation Bill** is presented, as if in the interest of the public, the provisions that follow are heavily laden with autocratic actions that would seem to benefit state organs.

Many organisations made very thorough inputs in their submissions and they highlighted the legal problems, the economic consequences and also many many valuable suggestions were made which we hope this Portfolio committee will consider.

The **Expropriation Bill** is formulated in such a way that the unlawful expropriation of property by the state is deemed lawful. This specifically refers to instances where compensation is less than the market value or replacement value of the property, crops on the land and specialised equipment.

Even more problematic is the fact that the **Expropriation Bill** can establish a process according to which compensation may be as low as nil rand.

The **Expropriation Bill** is aimed at empowering the state to unilaterally take away property rights, and retain them itself. This is a sugar-coated attempt at the nationalisation of property and we must warn against this.

The circumstances under which property may be expropriated are not clear at all. This allows the state to expropriate property for any reason, as long as it is alleged to be *“expropriated in the public interest or for a public purpose”*.

The **Expropriation Bill** does not impose an obligation on the state to explain or demonstrate how expropriation is justified in the public interest or for the public purpose.

- Subsequently, there is no burden of proof on the state to prove this important precondition.

The burden of proof on the individual affected or prejudiced by the **Expropriation Bill** is consistently against the specific individual when the autocratic actions of the state are contested.

I also refer you to our full submission - The negative effect on all forms of tax flowing from the **Expropriation Bill** is draconian and should be thoroughly analysed. The impact on all elements of real economic activities should also be quantified. - The actual true fiscal impact relative to the **Expropriation Bill** should not only be thoroughly analysed and determined from a cost perspective, but also in respect of the tax receiveable basis. It is clear that unpopular intervening taxation legislation will have to follow. Please refer to our written submission which details the tax implications.

Rather abandon the current proposes bill and redraft the legislation taking into consideration all the submissions than to push ahead with a bill which in our view is undesirable and probably unconstitutional.

We maintain further that section 25 of the constitution constitutes a proper legislative framework for real land reform and that it should be used to speed up the land reform process. Furthermore access to property for all South Africans must be done on a proper legislative basis and processes, and based on sound principles and not on a basis to expropriate and to do so on this basis as foreseen in this draft bill.

We end this oral submission with the powerful words in the November 2017 report of the High Level Panel (HLP) chaired by Former President Kgalema Motlanthe which reviewed and assessed - Key legislation and the acceleration of fundamental change. “

“The Panel found that in many instances the problems identified do not arise from the terms of the law per se, but rather from failures of implementation and enforcement.” In our view more draconian legislation will NOT solve the problem as highlighted by the former president

The Afrikanerbond thanks the Portfolio Committee for the opportunity to be invited and to participate in this session of oral submissions.

Die Afrikanerbond
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