ORAL SUBMISSION TO THE PORTFOLIO COMMITTEE ON PUBLIC WORKS AND INFRASTRUCTURE ON THE EXPROPRIATION BILL [B23-2020]

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1. INTRODUCTION

Upon the advent of the democratic era and the adoption of South Africa's Constitution of 1996, our country was set upon a new path, a promise that "never again shall it be that this beautiful land will again experience the oppression of one by another". The business community has always seen the Constitution of the Republic as a guarantee, not only for fundamental human rights, but as the required framework to enable the private sector to create economic growth, jobs and wealth for all citizens.

Today, despite the pure intentions of the Constitution and the fundamental rights contained therein, it is becoming evident that even the epitome of legislature is being used as a vehicle to deviously promote and implement ideals that will derail the economy and society. The clearest example of this is the sustained attack on property rights.

Despite the apparent sanctity of the Constitution and the rights enshrined therein, together with its progressive aim at fair land reform and/or restitution, Parliament, in February 2018, adopted the resolution that the need exists for Government to have the ability and power to expropriate private property, without the requirement of compensation. After this resolution and a suspect public commentary process, the Constitutional Review Committee tabled its report in Parliament during November 2018.

2. DISCUSSION

NEASA vehemently opposes the implementation of the EWC Bill, for various reasons, one of which is the effect the Bill will have on business, in both their capacity as consumers and employers of this country. NEASA strongly believes that fair and successful land reform requires a balance between existing land rights, food security and prosperous business on the one hand, and historical redress and restitution on the other.

NEASA does not support any policies which undermine the ability of business to function optimally in the economic environment of South Africa. We believe that expropriating the property of any private business owner or any citizen, through the EWC Bill (i.e., transfer of ownership, shares or stocks) will be devastating to, not only those business owners, but in effect their employees, investors and the economy in its whole.

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This EWC Bill threatens the core belief of business owners in their ability to thrive in a free market dispensation in South Africa. Without this belief, the motivation of entrepreneurs to start and run their own businesses, will vanish. The EWC Bill destroys any safety measures the private sector has against an attack on property rights by Government. Government's aim with the EWC Bill to "share the wealth", will not be accomplished by EWC; EWC is a method of socialist redistribution which has, globally, failed spectacularly.

Expropriation without compensation has failed in every jurisdiction where it was introduced. It has failed in Burundi, Ghana, Zimbabwe, India, Kenya, Nigeria and Venezuela - to name but a few. There is nothing intrinsically unique about South Africa's position with regards to the implementation of its laws on EWC. It will inevitably fail, as it has failed in all other countries who chose this path. South Africa will be no exception; to believe the contrary would be foolish and an irrational denial of the existing, irrefutable proof from other jurisdictions:

- In Burundi, after the civil war between the Hutus and the Tutsis, and the influx of returning refugees, expropriation without compensation caused political and economic instability stemming from the Government's inability to compensate those returnees whose land was unduly acquired, in their absence during war, and its absolute abuse of power in the confiscation of their land. The threat to land security rights and the State's interference in private property, as well as its poor land governance and abuse of power, caused homelessness, poverty, mass civil massacres, and interminable wars. Land conflicts still plague the country even today.

- In Ghana, as a result of EWC, growth in domestic private investment and Foreign Direct Investment was adversely affected and there was a shift away from long-term investments required for economic growth.

- The inefficiencies that exist in the expropriation laws in Nigeria, creates space for much infringement, which has resulted in cumbersome land acquisition processes that have hindered economic progress in a fast-paced economic world.

- In India, the expropriation that had started with land, has, over the decades, expanded to regulatory taking of land, the limiting of the market scope, the undervaluation of capital, the depressing of incomes, controlling of profits, often even prices, and the retarding of investment and employment opportunities.

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India is a living illustration of the cost of sacrificing the principle of property rights in the name of protecting the poor. It has trapped India in poverty, corruption, inefficiency, and its consequential social fragmentation and sporadic violence.

Even the poor, those who suffered most under the expropriations undertaken in their name, now, for the first time, at the grassroots, are realising the burdensome heavy hand of the State and are recognising the significance of property rights.

- In Kenya, land-grabbing and irregular allocation of land became a common affair. The statutes in place, where land administration was centralised and controlled by the Ministry of Lands, enabled this. Rogue officers had access to vast parcels of land marked as 'government land', which they grabbed or sold off to their networks of cadres.

  The land issues in Kenya resulted in environmental, social, economic and political problems, including the deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilisation, and abandonment of agricultural land, tenure insecurity and conflict.

- The lessons that can be learned from the tragic experiences of nations enslaved in the historic Soviet Empire, should give us a better perspective on the situation in South Africa, regarding the dangers of seemingly simple and quick centralised solutions to complex socio-economic problems.

The dismal failure of socialism in Russia, the enormous suffering and the hardship of the people in all socialist countries, serves as a powerful warning against socialism, statism, and interventionism. The most audacious attempt in human history to abolish private property ended in disaster in the USSR, and it is unlikely to be repeated as the memory of that calamity remains fresh. However, South Africa seems to have conveniently forgotten. We will unfortunately suffer the same dire consequences if we go down this path.

One of the biggest and most threatening consequences of losing land or homes and farms, as well as businesses, is still bearing the responsibility to pay bonds on the already expropriated property.

When borne in mind that the EWC Bill not only affects farms or literal 'land', but private property, homes etc. as well, a marked decrease in the value of property is an inevitable consequence of either an amendment to legislation or the consequent market uncertainty. The resulting reduced appetite from property buyers, could further destabilise the banking sector and have a disastrous effect upon both the property sector and the country's credit ranking.

Broadly speaking, a property right is secure when the right holder perceives it to be stable, predictable and protected from expropriation or arbitrary change. Security typically implies the ability to appropriate benefits arising from a particular property right.

The economic case for secure property rights is that growth depends on investment; however, investors do not invest if there is a risk of arbitrary expropriation. Any investor or business person will ask the following questions: Would I invest in a country with uncertain property rights or repressed economic freedom? Will my money be safe? Will my investment grow? Would I invest in a country where economic freedom has deteriorated, and the perception of property rights has regressed drastically? The answer will be a resounding "No!"

The EWC Bill, currently before Parliament, has the potential of devastating the South African economy. It holds the risk of setting in motion hyperinflation, the cessation of production, and severe shortages in food, goods and services.

To understand this contention, we can examine the examples of Zimbabwe and Venezuela, where the core intention of the EWC Bill – confiscation of property – was implemented. In Zimbabwe, Mugabe's "land grabs", accomplished the destruction of farmers' property rights and caused business confidence to plummet, resulting in hyperinflation, which at one point reached 80 billion percent! The majority of Zimbabweans were left destitute, as prices of goods and services multiplied throughout the course of a single day.

In Venezuela, the country's constitution was amended and legislation to allow expropriation of large idle estates was introduced. Although the 'expropriation' process in Venezuela was started on a limited scale initially, with the aforementioned constitutional amendment only targeting 'large' and 'idle' properties, it was shortly thereafter expanded to agricultural properties (and went on to be expanded further still to all types of enterprises and their assets). This resulted in a 40 percent decrease in the production of staple crops. These shortages were initially covered by using Venezuela's oil wealth to import food, but when the oil price plummeted in 2014, rationing of food and price controls became necessary and unavoidable. The eventual results being food riots, hijacking of food trucks, and the violent looting of stores. By 2018, Venezuela's annual inflation rate had reached 65 000 percent!

If South Africa follows Zimbabwe and Venezuela in allowing confiscation of property, the economic implications will be the same. Similar hyperinflation, shortages and upheaval can be expected.

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South Africa is a country in dire need of increased, stimulated economic activity and capital investment. Creating hysteria and mass uncertainty regarding rights in the Constitution, in this case property rights, is the worst road to take.

If EWC were to be accepted and adopted, even in diluted form, it would be the straw that breaks the fragile “economy-camel’s” back. South Africa has been cut down at the knees due to Covid-19, transformation rules that closed the funding taps for private entities who do not adhere to BEE compliant requirements, and now the government is threatening the core of business owners’ and their financial institutions’ survival.

Banks and other financial institutions are, in the majority of cases, the method with which South Africans finance property such as homes, agricultural land, vehicles, factories, businesses and many other assets. The private sector has been the life blood of the South African economy for most of its democratic existence.

3. CONCLUSION AND RECOMMENDATION

EWC will affect every single business, whether big or small; will demolish what remains of our post-Covid economy; drive away any possible investors, local and international; break down what is left of the trust in Government and flair up social tensions in South Africa.

NEASA recommends that any portion of this Bill which provides for the expropriation of property with nil compensation to be removed from the Bill, that is:

- the entirety of the preamble and purpose of the Bill must be revised;
- section 12(1), 12(2), 12(3) and 12(4) must be revised or deleted; or
- alternatively for the entire Bill to be reconsidered; and
- that the broader definition of property and which property may be expropriated, as well as for which purpose, to be clarified and well defined.

If there is any real desire from Government to efficiently implement Land Reform measures, expropriation must be done with compensation, at the least for the security and respect of property rights. This will require an entirely different approach to the one proposed in the Bill.

The Bill sets a political goal (“land redistribution”) above the economic interest of South Africa’s citizens. NEASA supports land restitution, that is, compensating those who were historically or are currently deprived of their assets by the State. Where a government has stolen property from an individual or community, historically or currently, compensation must be made.

The Expropriation Bill creates a framework that exposes every South African – employer and employee – to the risk that their property can be taken without their consent. History has shown that property rights present the mechanism through which individual rights are given impetus. Societies collapse in situations where the state has absolute authority as in the manner provided for in the Expropriation Bill. Zimbabwe and Venezuela, as mentioned earlier, are but recent examples. South Africa is on the verge of repeating the horrific mistakes of these countries. In these dispensations, where property rights are disregarded, even the constitution has little value.

NEASA submits that this legislation is ill-conceived and should be withdrawn.

Regards

Jaco Swart
NATIONAL MANAGER