

27 September 2023

ORAL SUBMISSION TO THE PORTFOLIO COMMITTEE ON PUBLIC WORKS AND INFRASTRUCTURE ON THE EXPROPRIATION BILL [B 23B-2020]

1. INTRODUCTION

The business community, NEASA's constituency, considers the Constitution of the Republic as a guarantee, not only of 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 legislation is being used as a vehicle to deviously promote and implement socialist ideals that will completely derail the economy and our society. The clearest example of this is the sustained attack on property rights.

Although NEASA already previously made submissions on the Expropriation Bill, our latest written submission not only illustrates the devastating effects the Bill will have on the South African economy and our socio-economic welfare, but it also analyses the relevant sections of the Bill that will cause the damage.

2. DISCUSSION

It is our view that the Expropriation Bill poses a legion of dangers through not only its vague and 'open-to-interpretation' wording, but primarily through its goal to remove the security and strength of absolute property rights.

At the heart of the Bill lies an unquenchable drive towards socialism through the nationalisation of private assets, to the detriment of the economy and consequently all South Africans.

The Expropriation Bill has no definition of 'land reform'. In fact, no South African legislation pertaining to land reform has any definition thereof. This should alarm all stakeholders possibly affected by the Expropriation Bill.

The root of the problem is the inclusion of, and obligation created within the Constitution with regard to land redistribution. The mere fact that the Constitution allows for legislation to be created in order to achieve land redistribution, does not mean that the legislature and the government are obliged to do so, sacrificing economic stability and socio-economic welfare in the process.

The Governing Party's model of land reform includes both land restitution and land redistribution. In this regard we need to emphasise that NEASA has no objection against lawful, substantively and procedurally fair land restitution, in order to redress the result of past racially discriminatory laws or practices. However, whether for a justified public purpose, or in a justified public interest, any and all expropriations must be done at just, fair and equitable compensation.

The problem we have is with land redistribution. Apart from its immoral nature based on the obsession with discriminatory race-based laws, under the never-ending guise of redress for apartheid, is that it has failed globally, without exception, and will continue to fail, as it is not economically viable, sound, or sustainable. Implementing it will turn out to be a catastrophic disaster, a deadly mistake.

75% of the farms that received post-settlement support through the *Recapitalisation and Development Programme*, are either operating at subsistence level or are not productive at all. This statistic is according to Government's own sources. However, we believe that the reality caused by this failed policy is far worse.

As proven through the arguments in NEASA's written submission, land reform, with specific reference to land redistribution, is not in the public interest, and consequently, the Expropriation Bill cannot and must not be utilised to achieve it.

We submit that the state must abandon the entire concept of land redistribution as a pillar of land reform. It is a fundamentally flawed concept of redress and will never succeed.

What should also be addressed is the fact that the Bill does not limit property to land. One has to question why the state would find it necessary to expropriate other types of property, apart from land, for an apparent 'public purpose' or in an undefined and wide interpretation of 'public interest'.

Although section 25 of the Constitution states that 'property' is not limited to land, how would the state ever be able to motivate that the expropriation of any property, other than natural resources, is in the 'public interest', which is not defined. This in itself is extremely problematic. What other property's expropriation can be justified under 'land reform', or 'ensuring equitable access to natural resources'?

We consequently submit that, for purposes of expropriation, 'property' should be limited to land only, and the Expropriation Bill should be amended accordingly, regardless of section 25 of the Constitution – which should either be amended or scrapped.

If the Bill is enacted in its current form, banks will become more reluctant to extend mortgage finance, for they will know that properties, any property, that might in time be expropriated are unlikely to provide sufficient collateral for loans. This will make it exponentially more difficult to secure mortgage bonds.

It will also become impossible for, not only farmers, but all businesses, to borrow working capital using their property as collateral. This will severely negatively impact agricultural production, food security, in fact business activity all round, and consequently the entire economy.

Expropriation is not only horrifically unjust to the expropriated owner, as they will still have to repay the remaining mortgage, but because they evidently won't be able to do so, it will lead to the immediate destabilisation of the banking sector.

3. CONCLUSION

In conclusion, the Constitution, together with other legislation, such as the *Restitution of Land Rights Act* and the *Upgrading of Land Tenure Rights Amendment Act*, already allows for expropriation in the public interest and for public purposes, including the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources.

While NEASA understands the need for legislation to regulate expropriation in line with the Constitution, the current Expropriation Bill is not only unconstitutional but also poses significant risks to South Africa's people, the economy, and our socio-economic framework.

The Expropriation Bill attempts, in its current form, to go far beyond the reach and authority of the Constitution's provisions regarding the deprivation of private property and consequently must be scrapped or, at the very least, amended to comply with our constitutional values.