



FW de Klerk
FOUNDATION

Oral Submission on the Expropriation Bill 23-2020

Wednesday, 27 September 2023



FW de Klerk
FOUNDATION

Tyla Dallas

Manager: Constitutional Programmes

tyla@fwdeklerk.org



OBJECTIVES OF FOUNDATION

1. Support and promote the **Constitution, Bill of Rights** and the **Rule of Law**.
2. Promote **Unity in Diversity** by working for reconciliation, understanding and goodwill between South Africans.
3. Promote the **legacy of FW de Klerk** by providing information on his life and career and on South Africa's transition to a non-racial constitutional democracy.
4. Support charities that care for **disabled and disadvantaged children**.



FW de Klerk
FOUNDATION



FW de Klerk
FOUNDATION

INTRODUCTION

We support land reform that is constitutionally compliant, that is just and equitable and that has either been agreed by those affected or decided or approved by an impartial court. We strongly recommend **closer cooperation between government and organised agriculture** to achieve such an outcome.

The Bill's provision for expropriation without compensation (EWC) poses a **fundamental threat to investment, economic growth, agriculture, food security and to the national accord** on which our new nonracial democracy was founded.



FW de Klerk
FOUNDATION

BROAD NATIONAL CONCERNS

Although South Africa needs a new Expropriation Act in line with Section 25, we believe that the present Bill, incorporating as it does the principle of expropriation without compensation (EWC), would have catastrophic consequences for

- the **property rights** of all South Africans
- the **agricultural sector and food security**
- **investment and economic growth**
- **national unity**; and
- the **future prosperity and freedom** of all South Africans



FW de Klerk
FOUNDATION

LACK OF CONSTITUTIONALITY

- No proper definitions for key concepts of “public interest”, “public purpose” and “land reform”
- Definition of “expropriation” is vague
- Extends beyond land - “including but not limited to”
- Does not pass the S36 limitations test



NEGATIVE IMPACT ON NATIONAL UNITY

- S25 was one of the most closely contested and negotiated provisions in the 1996 constitution
- The Bill - and the principle of EWC - would **remove the keystone of South Africa's great national accord – and would seriously undermine prospects of national unity**
- Application of EWC would cause bitterness and irreparable harm to national unity

NEGATIVE IMPACT ON THE QUALITY OF LIFE

A. Property rights and the quality of life

Economic Freedom Quartile	Fourth ¼ (Least Free)	Third ¼	Second ¼	First ¼ (Most Free)
GDP per capita	\$6 542	\$14 122	\$23 234	\$48 251
Life expectancy	66	72,3	76,1	80,4
Infant mortality per 1000 births	36,9	19,9	11,2	4,8
Income earned by the poorest 10%	\$1 736	\$2 641	\$5 654	\$14 204
Poverty rate at \$1,90 PPP per day	31,45%	17,44%	7%	2,02%

Simon Fraser Institute Annual Economic Freedom Survey for 2022



FW de Klerk
FOUNDATION

NEGATIVE IMPACT ON FREEDOM

B. Property rights and freedom

Respect for Property Rights	Fourth ¼	Third ¼	Second ¼	First ¼
Free	28%	34%	45%	75%
Partly Free	49%	45%	37%	8%
Not Free	23%	21%	18%	17%

Freedom House: Freedom in the World 2016



FW de Klerk
FOUNDATION

NEGATIVE IMPACT ON AGRICULTURAL SECTOR

C. Impact on Agricultural Sector and Food Security

- Only 13% of SA suitable for arable production (agriculture)
- Commercial farmers produce 95% of food in SA
- Bill jeopardises the R 332,8 billion – **2,6% of GDP** – produced by the sector in 2017
- Threatens food security
- According to AgriSA: Black farmers have acquired about 2 million ha of farmland (**2.3% of total freehold farmland**) without assistance from state-sponsored land redistribution programmes



NEGATIVE IMPACT ON ECONOMY

D. Impact on Economic Growth and Job Creation

- SA poor economic performance:
 - **economic growth of only 9.7%** in the decade between 2012 and 2021, compared with a population growth of 15%;
 - world's **highest unemployment rate** of 34.5% and 45.5% (expanded rate), compared to the global rate of 5.7%;
 - world's **highest level of inequality** (0,63 on the GINI scale); and
 - **dependence of 60% of households on government** transfers
- Property rights are the foundation of all free economies
- Sustained and inclusive economic growth is the only way out of crippling unemployment and poverty in the country
- Case of Venezuela and Zimbabwe





FW de Klerk
FOUNDATION

Suggestions:

1. Withdraw and replace with constitutionally compliant Bill
2. Support and prioritise activities to expand property rights
3. Look to other countries for best practice



FW de Klerk
FOUNDATION

Closing

The Bill would severely limit the right to property of all South Africans – a core right that is internationally recognised; that is a requirement for free and prosperous societies; and that is essential for the empowerment and the realisation of the potential of citizens.

One cannot have a free and successful society without secure property rights.



FW de Klerk
FOUNDATION

Thank You!

