



FREE STATE LEGISLATURE

**PORTFOLIO COMMITTEE ON PUBLIC WORKS, INFRASTRUCTURE,
ROADS, TRANSPORT AND HUMAN SETTLEMENT**

Negotiating Mandate

TO: Chairperson of the Select Committee on Transport, Public Service and Administration, Public Works & Infrastructure

NAME OF BILL: Expropriation Bill

NUMBER OF BILL: [B23B-2020]

DATE OF DELIBERATION: 31 October 2023

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Public Works, Infrastructure, Roads, Transport and Human Settlement as designated by the Free State Legislature proposes the following amendments to the Bill and votes in favour of the Bill:

Clause	Provision	Comment	Recommendation
Clause 1	Definitions	Definition s: 1. “Property” does not speak to the objective of the Bill and thus is misleading	The definition of “Property” must be clear in order to articulate the objective of the Bill. The content of the Bill is intended to provide expropriation of property which includes both movable and immovable property. However, this is not clear in the definition of Property in the Bill. Please reconsider.

		<p>Definition of “Public Interest”; and “Public Purpose” are not in congruence with the Objective of the Bill</p>	<p>Please consider publication on "PUBLIC PURPOSE OR PUBLIC INTEREST" AND THIRD-PARTY TRANSFERS"FAIR" MATHEMATICS IN ASSESSING DELICTUAL DAMAGESVol 17 No. 1 by BV Slade – ISSN 172737-3781 http://dx.doi.org/10.4314/pej.v17i1.042014</p>
Clause 2		<p>Application of Act – sounds more like prohibitions instead of to whom, where and how the Bill is applicable</p>	<p>Reconsider the Application Clause and recraft it as follows: This Act is applicable to.....</p>
Clause 3		<p>Powers of minister to expropriate</p>	<p>The interpretation of "Property" has an overarching application throughout the Bill and needs to be corrected throughout the Bill to make it easy for implementation and understanding.</p>



HON S MOLELEKI

CHAIRPERSON OF PORTFOLIO COMMITTEE ON PUBLIC WORKS,
INFRASTRUCTURE, ROADS, TRANSPORT AND HUMAN SETTLEMENT

FREE STATE LEGISLATURE

31 October 2023



Free State Legislature

**REPORT OF THE PORTFOLIO COMMITTEE ON PUBLIC WORKS,
INFRASTRUCTURE, ROADS, TRANSPORT AND HUMAN SETTLEMENTS
WITH REGARD TO THE PUBLIC HEARINGS ON
EXPROPRIATION BILL [B23B - 2020]**

DRAFT REPORT

**TO THE HONOURABLE SPEAKER AND HONOURABLE MEMBERS OF THE
FREE STATE LEGISLATURE**

The Portfolio Committee on Public Works, Infrastructure, Roads, Transport and Human Settlements herewith submits its report, Inputs by the public and recommendations with regards to the Public Hearing on the Expropriation Bill [B23B - 2020].

The Portfolio Committee wishes to express its gratitude to the officials of the National Department of Public Works, Provincial Department of Public Works and all Stakeholders from the Public and Private Sectors for their inputs and effective participation during consideration of the Bill.

Chairperson and Members of the Portfolio Committee:

**M. S MOLELEKI
CHAIRPERSON**

BULWANE, K.W

CLOETE, A. B

MASHININI, M. S

MOKOENA, M. J

TSHABALALA, M. A

TSHABALALA, V. W

TSIU, M

TABLE OF CONTENTS

1. INTRODUCTION AND PURPOSE OF THE BILL
2. MEMBERS OF THE PORTFOLIO COMMITTEE
3. PROCEDURE OF THE PORTFOLIO COMMITTEE
5. OVERVIEW OF THE PUBLIC HEARINGS
6. RECOMMENDATIONS

1. INTRODUCTION AND PURPOSE OF THE BILL

The Portfolio Committee on Public Works, Infrastructure, Roads, Transport and Human Settlements conducted the public hearings to solicit comments and inputs from stakeholders and public on the Bill.

To provide for the expropriation of property for a public purpose or in the public interest; to regulate the procedure for the expropriation of property for a public purpose or in the public interest, including payment of compensation; to identify certain instances where the provision of nil compensation may be just and equitable for expropriation in the public interest; to repeal the Expropriation Act, 1975 (Act No. 63 of 1975); and to provide for matters connected therewith.

The Public hearings were conducted in compliance and commitment to section 118 of the Constitution of the Republic of South Africa, which enjoins the Legislature to facilitate public involvement in the legislative and other processes of the legislature and its committees as well as to conduct its business in an open manner and hold its sittings and those of its committees in public.

2. MEMBERS OF THE PORTFOLIO COMMITTEE

The Portfolio Committee comprises the following Members:

Moleleki, M. S	(Chairperson)
Bulwane, K.W	(Member)
Cloete, A. B	(Member)
Mashinini, M. S	(Member)
Mokoena, M. J	(Member)
Tshabalala, M. A	(Member)
Tshabalala, V. W	(Member)
Tsiu, M	(Member)

3. PROCEDURE OF THE PORTFOLIO COMMITTEE

The Portfolio Committee on Public Works, Infrastructure, Roads, Transport and Human Settlements was briefed by the NCOP permanent delegate Hon. Moshodi with the assistance of officials of the Department of Public Works

on the 24th May 2023. Which then lead to the process of Public Participation and Education to take place throughout the Free State Province.

The Public Hearings were conducted as follows in 5 districts of the province:

The public hearings will be conducted as follows: -

PROGRAMME OF THE INFRASTRUCTURE DEVELOPMENT

PORTFOLIO COMMITTEE

Date	Time	Venue
24 May 2023	10:00	Bohlokong New Hall, Bethlehem, Dihlabeng Local Municipality
25 May 2023	10:00	Multi - Purpose Centre, Sasolburg, Metsimaholo Local Municipality
26 May 2023	10:00	Ferdi Meyer Town Hall, Welkom, Matjhabeng Local Municipality
30 May 2023	10:00	Trompsburg Town Hall, Trompsburg, Kopanong Local Municipality
31 May 2023	10:00	Lesly Monnanyane Hall, Mangaung, Mangaung Metro

4. OVERVIEW OF THE PUBLIC HEARING ON Expropriation Bill [B23B - 2020]

4.1 General Comments by the Public and Stakeholders.

1. According to section 12(3) of the Bill, it gives the Department power to determine the price for the property which is unfair to the owner of the property. Annexure
2. Section 2.2 states that the state has more rights than the owner which is unfair. This will affect the economy of the country and may have a serious impact on the finances of the owner.
3. Expropriation of land without composition is a serious challenge and the Bill should rectify it.
4. Free State Agricultural Farmers does not support the Bill as they feel that their rights of the people are being violated.

5. The land that is abounded should be given to the people that can utilize it.
6. The Bill should ensure that previously disadvantaged communities are given the vacant land and / or expropriated land as most of them do not own the land.
7. The intended expropriated land that is still owed should be paid off by the government including the mortgage bond.
8. Property loans should be paid off by the government if they intend to expropriate the land.
9. The Bill should also include the right of individuals to refuse the expropriation of their land.
10. The Bill should also consider expropriating the vacant land to the rightful owners and not target the farms of white people.
11. Clause 12 (3) (4) is not supported. Landowners should receive prompt compensation.
12. The Bill should also include farm workers and protect their rights in the farms that they work for and have stayed there for more than 20 years.
13. Free State Commercial farmers in Fezile Dabi do not support the Bill.
14. The Bill does not clearly state the role of the municipalities when the land is being expropriated.
15. Land reform Department has lots of farms that are not distributed.
16. Privately owned properties that are abandoned should be expropriated and be distributed to the needy people.
17. The Bill should address the challenge of title deeds as most previously disadvantage people that were given the land still do not have the title deeds.
18. The Bill should also protect the elderly people who owns the land that needs to be expropriated.
19. Free State Agriculture is concerned that the definition of the Bill is too wide and broad, and it needs to be amended.
20. The youth should also be considered when the Bill is approved into a law.
21. All the people of the four districts in the province supports the Bill except Thabo Mofutsanyana District, the Free State Commercial farmers in Fezile Dabi, Free State AfriForum, Free State Freedom Front Plus Party and Free State Agricultural Farmers.

4.2 List of written submissions

1. Annexure 1: Free State Agriculture
2. Annexure 2: Hon. A. Cloete, Freedom Front Plus Party

3. Annexure 3: Hilton Maasdrop, Ward 9 Councillor at Dihlabeng Local Municipality
4. Annexure 4: Manie Pretorius, PR Councillor at Matjhabeng Local Municipality
5. Annexure 5: Valerie de Kock, Councillor of Freedom Front Plus at Mangaung Local Municipality.
6. Annexure 6: Chriszaan Du Plessis, Freedom Front Plus
7. Annexure 7: Louis van Wyk, Freedom Front Plus
8. Annexure 8: Councillor C. Kalamer, Andi Wolmarans. Lieb Liebenberg, Freedom Front Plus Party
9. Annexure 9: AfriForum, Johan van der Merwe
10. Annexure 10: Arnor Powell, AfriForum
11. Annexure 11: Mrs. C H S van der Walt. Reitz, OVS
12. Annexure 12: PR Swanepoel
- Mr. Annexure 13: Michael Prinsloo
- Mr. Annexure 14: Leon Smith

5. RECOMMENDATIONS

After briefing and analysis the Portfolio Committee made the following recommendations:

1. The Department must start working on considering the implication of high interest rates on mortgage bonds *vis – a – vis* motor vehicle loans.
2. It is recommended that the National Council of Province should note and implement the inputs made by the community.
3. The Bill is supported by all four districts except Thabo Mofutsanyana District, the 14 people that are listed and / or institutions that made their written inputs.

Annexure 1: Free State Agriculture



**VRYSTAAT LANDBOU
FREE STATE AGRICULTURE**

EXPROPRIATION BILL B23B/2020

PUBLIC HEARINGS

May 2023

Dear Chairperson, National Council of Provinces,

I am _____, representing Free State Agriculture, a federation of farmers' associations located across the Free State Province.

FSA represent some 3000 commercial farming operations in the Free State, providing a considerable amount of employment opportunities within the agricultural sector.

Commercial agriculture in the Free State:

- Plays a strategic role in ensuring food security in South Africa; and
- In respect of agriculture, it is contributing to local, provincial, and national economic growth, development, and export earnings imperatives.

We support an orderly and responsible process of agricultural development.

CURRENT SOCIO-ECONOMIC CRISIS

It is only through economic growth and development that triple challenges of inequality, poverty, and unemployment – and more so in our rural areas can be meaningfully addressed.

OUR STANDPOINT

We cannot support the inclusion of 'nil compensation'.

Today's farmers cannot be held solely responsible for historical events and cannot be required to bear the burden of addressing dispossession disproportionately – it is a collective responsibility.

The spectre of wanting to introduce the expropriation of land with 'nil compensation' is unjust at the best of times as well as irrational and irresponsible at a time when our country is crying out for investment, economic growth, job creation, poverty alleviation and the creation of a just and equitable society.

As Free State Agriculture we do **NOT** support:

- The definition of 'Expropriation' in the Bill:

The danger of a narrow definition such as the current proposal in the Bill is that it may open the door for all kinds of government action that may severely limit property rights without compensation, or even acquiring property on behalf of third parties without compensation. The focus should be on the loss that the owner suffers, not on acquisition by government organs.

We are of the view that the definition should be scrapped. This will allow the courts to deal with each case on its own merit. Alternatively, the definition must be wide enough to include all forms





VRYSTAAT LANDBOU
FREE STATE AGRICULTURE

of expropriation recognized internationally. The exclusion of severe statutory limitations on the use of property from the concept of expropriation could have a negative impact on investor confidence and the growth of our economy.

- Clauses 12(3) and 12(4) which provide for the possibility of nil compensation

We believe that if and where expropriation is justified:

- It should be perceived by all to be a fair and transparent process;
- Safeguards should be in place to prevent the misuse of power;
- Landowners should receive prompt, adequate and effective compensation which will allow them to start anew – they should not be worse-off as a result of the expropriation; and that
- The full cost of expropriation should be borne by the fiscus.

Therefore, Free State Agriculture and our Members, cannot support the Expropriation Bill in its current form.

Thank you, Chairperson.



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TSA TEMO FREISTATA
FREE STATE AGRICULTURE

AWARENESS DOCUMENT OF THE EXPROPRIATION BILL B23-2020

Introduction

The basis for this awareness document of the Expropriation Bill (the Bill) tabled for public comment is the position of Free State Agriculture as mandated by the 2019 Free State Agriculture (FSA) Congress obtained from our members:

FSA has worked with Agri SA who together with an expert appointed legal team has been part of the engagements processes on a new Expropriation Bill ever since 2008. They have participated actively to align the bill to the mandate provided to Agri SA by their members. Sections have however been added to the Bill that list instances where the state can expropriate property in the public interest without paying for it.

The agriculture community is in the process of compiling a detailed analysis and comment on the current bill and FSA will continue to contribute to this document. The purpose of this FSA document is to raise the most worrying issues arising from the Bill within our specific mandate from our members.

First and foremost this document aims to support and guide our members to make their informed voices count in this democratic policy formulation process.

Secondly we would like to inform the general public of the risks of this amendment to **all private property** and raise their support as well in opposition of the Nil Compensation door that this Bill opens.

The Intentions of the Bill

In the preface to the 15 October 2020 version of the Bill as presented to the Portfolio committee in parliament (B23-2020), it was very clearly pointed out what the intention of the Bill is, namely:

"To provide for the expropriation of property for a public purpose or in the public interest; to provide for certain instances where expropriation with nil compensation may be appropriate in the public interest; and to provide for matters connected therewith."

The definition of public interest is very clear – to bring about reform to ownership patterns of all of South Africa's natural resources – including land and water rights:

"... 'public interest' includes the nation's commitment to land reform, and to reform to bring about equitable access to all South Africa's natural resources in order to redress the results of past racial discriminatory laws or practices;"





Expropriation for public purposes is not new. When expropriation for public purposes occurs and is implemented by governments that are not marred by corruption, this activity is accepted by the population as legitimate. In these cases, expropriation for public purposes is used to provide specific public infrastructure and services. Importantly such a process is limited and closely and competently managed. A defining attribute of expropriation for public benefit is that the owner of the affected property is compensated to be at least as well off as he or she would have been before the expropriation took place. Current expropriation legislation law allows for such a process.

Free State Agriculture is of the view that this new Bill is not merely intended to update the previous Expropriation Bill. This is made clear by the professed intention of the Bill. This law seeks to expand the rights of government to expropriate. It expands both the purpose of expropriation and the justification that can be provided and decentralises the expropriation process.

As defined, public interest does not refer to the building of roads, bridges, and dams. Public interest is described as a political imperative.

In addition, the definition of public interest is overly broad. This definition does not identify specific circumstances or events or projects that might be interpreted as a reasonable and isolated case for expropriation. Rather public interest is intended to be a blanket definition. This creates an opportunity for government officials to act in any situation in the "public interest".

This interpretation of the Bill is further justified when considering the unjust and illegitimate approach to compensating victims of state expropriation.

A further significant concern is the definition of "expropriation". In essence this definition is extremely narrowly defined and as such opens possibilities for regulatory and third party takings that are not addressed in the Bill. A broader discussion of this major concern will be contained in the final submission that will be presented to Parliament.

Intended compensation

Chapter 5 describes the Compensation methods for expropriation. Specifically Clauses 12 to 20 generally deal with compensation for expropriation. These clauses express the requirements of section 25(3) of the Constitution and thus sets the standard for all expropriation undertaken by an Expropriating Authority in the three spheres of government.

The overarching requirements for the determination of just & equitable compensation in terms of section 25(3) of the Constitution include the –

- a) current use of the property;
- b) history of the acquisition and use of the property;
- c) market value of the property;
- d) extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and



e) the purpose of the expropriation.

A so called “innovation” of the Bill is the explicit provision in clause 12(3)(a)-(e) of relevant circumstances which may result in the payment of nil compensation.

The payment of nil compensation may, in such a situation, be regarded as just & equitable after satisfying the balancing of rights process and the requirements of sections 25 and 36 of the Constitution.

Under Clause 12(3) relevant circumstances that may justify the payment of nil compensation include:

- a) where the land is not being used and the owner’s main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value;
- b) Where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;
- c) Notwithstanding registration of ownership in terms of the Deeds Registries Act, 1937(Act No. 47 of 1937), where an owner has abandoned the land by failing to exercise control over it;
- d) Where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land; and
- e) When the nature or condition of the property poses a health, safety or physical risk to persons or other property.

Market value is the agreed price that reflects the value of any item. It is reflective of the value perceived by free and independent parties that agree to transact. Such a value is determined by the price others are willing to pay, the underlying purchase costs, improvement cost and changes in economic value over time. The market value of any product, service or asset must be determined in such a way in order to derive a just and equitable transaction price. Paying less for an asset than what it is worth is unjust and not equitable. The constitutional framework should be interpreted against such a backdrop. Any other view will severely impact the rights of individuals to any property.

The Expropriation Bill’s assertion that circumstance do exist where nil compensation is regarded as just & equitable compensation is worrying. Clause 12(3) list a number of the circumstances that is open to wide interpretation. What would it mean if land is not used for the owner’s main purposes? What does failure to control land mean? What constitutes private property posing a health, safety or physical risk? Who will make such decisions? These clauses can be applied to any property.

Read together with the clear intent of public interest it becomes clear that these very broad categories are open to misuse, misinterpretation and could be used as a tool for intimidation of individuals. More importantly this law creates a significant uncertainty regarding all property and the rights associated with it.



The Bill focus on all property

The definition of property in the Constitution of the Republic of South Africa, Section 25 (4) (b) clearly states that *“property is not limited to land.”* Hence any fixed property such as houses and buildings as well as immovable property such as vehicles and even intellectual property can be included here.

Section 25 (4) (a) For the purposes of this section- states: *“(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources;”*

So as already done with mineral rights and through state custodianship over water rights, property encompasses all natural resources which includes land as a crucial factor of production.

Legitimate expropriation exists to assist the process of the delivery of public services and infrastructure. This law goes beyond that. The description intentionally indicates that all assets are targets for expropriation. This means that the authors foresee a situation where government could have the power to take other property from citizens. This means that houses, shares, savings, and any other asset can be targeted under the (undefined) auspices of so-called public interest. This interpretation was confirmed in 2013 television interview by the then deputy minister for public works, Minister Jeremy Cronin - watch www.youtube.com/watch?v=zcrIZ1miS50&feature=youtu.be (9 minutes into the interview).

Our view is that the Bill is not a mere attempt to update the 1975 Act. This law can be seen as an attack on the property rights of all South Africans and an attempt to set in place a process to deprive citizens of their rights. The impact of this proposed legislation will be severe.

The Impact of the Expropriation Bill

If this legislation is promulgated with South Africa's current debt status, expounded by COVID, will lead to instant further credit down grades, capital flight and a collapse of our economy leading to worse levels of poverty.

- Nearly 1 million agricultural jobs could conceivably be lost.
- The proven ability of the commercial farming sector to produce safe and affordable food for an urbanized population will be decimated!
- Furthermore the agricultural sector is the main economic activity of most rural communities; remove commercial agriculture and all the related agricultural support services collapse as well. Rural South Africa will collapse, with significant humanitarian crises.

This Bill waters down title to all property (not just agricultural land) with centralised state control which has proved disastrous where applied internationally.

Less than market-value compensation can lead to a breakdown in production, loss in productivity and poor cash-flow affecting food security. We cannot afford to open a gap that can undermine the open market value of all property.



All this for an undefinable “public BEST interest”

Conclusion

The **position of FSA** on the legislative issue regarding property rights include the following:

1. FSA rejects any amendment to section 25 of the Constitution (Act 108 of 1996) or any current similar bills of which FSA is of the opinion that such amendment may have a negative impact on any form of private property rights. At the same time, any expropriation of any form of private property without compensation is completely rejected.
2. FSA will oppose any legislation that may have a negative impact on any form of property right or expropriation of any form of private property
3. FSA supports future-oriented economically sustainable agricultural development that aims to pursue the expansion of the agricultural sector as well as food security to the people of South and Southern Africa.
4. The state must fulfil its responsibility with regard to infrastructure, extension services and other agricultural support services in cooperation with the private sector to help build the entire agricultural sector.
5. The state, commercial banks and other financing institutions must establish models to provide financing that provides full title to all new entrants to agriculture.
6. Property rights must be expanded to be accessible for all South Africans. The Expropriation Bill diminishes and threatens property rights.

In line with the position of the organisation’s mandate from our members, Free State Agriculture rejects the unacceptable provisions of the Expropriation Amendment Bill. In addition FSA calls upon civil society to join their efforts to stop this Bill in its current form and to petition for amendments addressing the issues raised in this document. As the action plan of FSA, we will this actively do the following:

1. FSA will take part in drafting the detailed written submission in collaboration with Agri SA and our members.
2. FSA will mobilise the public to oppose the problematic clauses in the Expropriation Bill in its current form.
3. FSA will formally present to parliament the submissions from all members of the public that signed this memorandum.
4. FSA will actively take part in the public hearings following the period for written representation.
5. FSA will oppose any legislation that may have a negative impact on any form of property right, or expropriation of any form of private property



**VRYSTAAT LANDBOU
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We call upon all South Africans who value their freedom and who own and trade in property of any sort to support us! We need all owners of private property to unite against these provisions made in the Bill.



Annexure 2: Hon. A. Cloete, Freedom Front Plus Party

Annexure 2



05 Oktober 2023

The Hon Chairperson

The Portfolio Committee on Infrastructure Development

Me S. Moleleki

Freedom Front Plus comments regarding Expropriation Bill

Dear Madam

Kindly consider the following comments for inclusion in the Mandate Report(s) on Expropriation Bill of which public hearings have been conducted in the province.

The Freedom Front Plus rejects the Expropriation Bill. Reasons for rejection of the Bill are;

1. The motivation of this expropriation bill and specifically the provision of nil compensation is based on the premise that current policy instruments and the willing buyer willing seller policy are hindering effective land reform. The subsequent view that expropriation with nil compensation is needed to ensure effective land reform under certain circumstances is also an erroneous conclusion.
2. 92% of claimants in the land restitution programme previously opted to receive financial compensation instead of the land claimed. Claimants clearly rather preferred financial compensation instead of land. This is a fact.
3. In effect, the beneficiaries' preference for financial compensation is the cause for inflated land prices and not land owners. This is confirmed by the annual reports of the Commission on Restitution of Land Rights.

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Unrepresented Nations and Peoples Organization

Die Vryheidsfront Plus is 'n lid van UNPO
The Freedom Front Plus is a member of UNPO

The data of settled restitution claims reveals that an amount was paid for the land in hectares and then an additional amount was paid to beneficiaries who did not want the land, but preferred financial compensation. In 2013/2014, the land cost was inflated with 30,28% and in 2014/2015 by 56,29% due to the preferred financial compensation,

4. Government is in possession of a lot of hectares of land but fails to carry such land over to beneficiaries. Fraud and corruption regarding land reform projects have led to the failures with land reform.
5. Article 17 of the United Nations' Universal Declaration of Human Rights recognises private ownership of property, and prohibits expropriation without compensation.
6. The Bill, should it be signed into an act, could most probably be contested in court, especially in The Constitutional Court since there are constitutional matters that could be disputed.
7. By signing the Bill without a constitutional consultation, the state will initiate legal processes that will have financial implications for the country. The President has the authority to refer the Bill to the Constitutional Court where its constitutionality can be tested. The President should use this mechanism before signing the Bill to avoid unnecessary and expensive litigation.
8. The Bill makes provision for nil rand or zero compensation, especially where land is not being utilized. The act is not clear as to what the definition of unused land is. This is problematic, since, for example, land that were scorched during veldfires will not be used in order for it to be revitalized for certain periods. Not all land that appear to be vacant are necessarily abandoned or not intended to be used.
9. According to the Bill, property (of land) is nullified once a notice of expropriation is issued. The Bill further places a responsibility on the initial owner to maintain the property that will be expropriated. Here the issue of ownership is contradicting, since the initial owner is expected to maintain property that no longer belongs to him or her. The Bill is also not clear to what extent maintenance will be expected from the initial owner.
10. Section 25 of the Constitution requires, amongst others, a transaction once property is expropriated. The question remains how a zero-rand transaction will be done by government.
11. The proposal of nil rand compensation, under any circumstance, is a violation of the principle of "willing buyer willing seller, which should be applied in the land reform process.

General observations

During the public participation process it was clear there is a need for land and the right to own property such as houses. Many of the issues raised by members of the community will not necessarily be addressed by an

Expropriation Bill, but should rather be the focus of municipalities and provincial departments such as human settlements and rural development. It is common cause that these spheres of government are not able to address the need of the Free State to attend to the housing and property needs of the province.

More legislation is not needed, but an improved public sector that functions properly, ethically, and free from corruption and fraud.

Furthermore, politicians must immediately stop making ideological and populist statements about land, falsely accusing white farmers in particular. Government is in possession of plenty of hectares of land, but fails to carry such land over to beneficiaries. Fraud and corruption regarding land reform projects have led to the failures with land reform.

I trust you will ensure that my inputs will be reflected in our reports and mandates discussions as requested.

Yours Sincerely



Armand Cloete MPL, FF Plus

Annexure 3: Hilton Maasdrop, Ward 9 Councillor at Dihlabeng Local Municipality

24/5/2023

EXPROPRIATION - BILL discussion in BHM

I am Hilton Maasdorp Ward Cllr in W9 Dhlabeng Municipality representative of the Khoisan - and part of the Griqua - Leadership in the Free State

The Freedom Chapter adopted in Kipton on the 26th June 1955 states that all national groups shall govern and all group groups have equal rights - That in it self champion Democracy

The national wealth of Country the land, the heritage of South Africans shall be restored back to the people first as it is the property!

We as the Griqua - Council supports land reform and land restitution - however until the expropriation without compensation bill, properly addresses issues around settling of mortgages, the threat of banking sector, the economy sector the impact it may have on traditional trust, the leaders, the first Nation etc.

I do not support the bill it confuses and is a philosophy but not practical!

Hilton Maasdorp 072 341 8635



Annexure 4: Manie Pretorius, PR Councillor at Matjhabeng Local Municipality

26 May 2023

Freedom Front Plus
Manie Pretorius
PR Councillor at Matjhabeng Local Municipality
0824956470

On behalf of Freedom Front Plus representing the voters who elected me to represent them here today.

Oral submission on the Expropriation bill.

Clarity seeking questions

- Q1 What was SALGA's input on this bill?
- Q2. What is the Matjhabeng Local Municipality's role in this regard. Quote from the Expropriation Bill point 3 (b) "where an organ of state holds land that it is not using for its core functions" what does this mean? For instance, Municipalities are not farmers. Matjhabeng has more than 150 farms in its possession. How productive are those farms being managed or utilized? There is no reporting or consequence management for failure to yield a reasonable income for the municipality.
- Q3. What are the time frames for land to be restored?
- A3.1 After the vegetation has been destroyed by a fire?
- A3.2 It is recommended that certain crops, for example potatoes, not be grown in the same bed year after year. Potatoes are heavy feeders and deplete the soil of nutrients leading to low yields or reliance on fertilizer.
- A3.3 Has crop rotation been factored into this Bill?
- If not then the new potato farmer is guaranteed to fail within a short period of time.

- Q4** When notice is served on a farm with the intention of Expropriation without compensation or with zero compensation,
- (i) Land ownership is immediately revoked
 - (ii) The farmer must still maintain the farm. What is the definition of that "Maintenance"? and how will it be monitored and measure?
 - (iii) What about the crop that needs to be harvested at that point in time? Must the farmer harvest it? Must he leave the crop to go to waste? The latter will most probably happen.
 - (iv) Why place the responsibility on the distressed owner? This is a recipe for disaster.
- Q5** What guarantees are embedded to prevent another Estina Dairy Farm Corruption Case of R280 Million. This is just one of many cases. The government should first visit all the land allocated to emerging black farmers and determine what the success rates are. Those instances where failures are evident must first be corrected. Consequence management must prevail. Only once those failures were rectified, this will take many years, should a Expropriation with nil compensation be considered.
- Q6** There are more than 17 Million Hectares (4,000 farms) currently in Government possession which it obtained through land reform. These farms can be made available to black farmers along with the relevant Title deeds.

Currently there are 12,964.68 Hectares (46) Farms in Matjhabeng Local Municipality under management of Local Economic Development yet no information on status of affairs, utilization, productivity or income yield.

The question is, if a state entity cannot manage almost 13 000 hectare or 46 farms how can they manage the existing 17

Million Hectares (4 000 farms) and then the government wants to add additional millions of arable hectares of land. This action defies any logic.

Question is, why is the current state of affairs, how many farms, utilization, productivity not made public in conjunction with this bill? Why is the government not open and transparent about the facts?

Q7 In 1998 1 Hectare was valued at an average price of R1,470 per Hectare. Today the average price per Hectare should be around R10,000 per Hectare. In some instances up to R38,000 is applied. Question is - what formula will be used by government to determine the value of land it obtained through nil compensation or is there no academic principles to be applied for future use on the actual value of those transactions. In the accounting industry this is called creative book keeping and should not be tolerated in civil society.

Q8 Has this nil or zero compensation been tested against the payment systems in South Africa

- (i) South Africa Revenue Services (SARS)
- (ii) Reserve Bank of South Africa
- (iii) Payment Clearing and Settlement systems in South Africa
- (iv) Payments Association of South Africa
- (v) South African Multiple Option Settlement (SAMOS)
- (vi) GOOGLE "division by zero is undefined for real numbers and can produce a fatal condition called a "division by zero error" in computer programs"

It is clear that book keeping systems and computerized systems will not function properly when a value of zero is entered.

CONCLUSION

1. This Expropriation with Nil compensation is nothing else that a cheap publicity stunt by the Ruling Party ahead of the 2024 Provincial and National Elections. They attempt to recover voters which they have lost due to failure to govern.
2. The government is playing with people's emotions and are covering up its ineffective land reform.
3. In 1997 Shoprite Holdings bought OK Bazaars for R1. Surely Shoprite must have conducted their investigations on why not to offer Nil compensation? It would be advisable for government not to rush to implement this Expropriation Bill.
4. The bill is not well defined and should be revisited to ensure all aspects including the processing model to be applied in the South African Payments Association, Financial Sector Conduct Authority and other relevant systems and institutions be consulted.

**Annexure 5: Valerie de Kock, Councillor of Freedom Front Plus at
Mangaung Local Municipality**

ANNEXURE 5

House Chair, all other protocol observed.

I am Valerie de Kock, Councillor for the Freedom Front Plus at the Mangaung Metro municipality.

As a representative of the Freedom Front Plus, I understand the importance of protecting individual property rights and upholding the principles of a free market economy. The proposed expropriation bill, which allows for the expropriation of land with zero compensation for purposes deemed to be in the public interest or for public purpose, is a grave concern for our party and our constituency.

While we understand the need to promote public interest and further economic development, we firmly believe that the expropriation of property without just compensation violates the constitutional rights of all South Africans and undermines the foundation of our democracy. This bill is a direct attack on the private property rights of citizens, many of whom have worked tirelessly to invest in and cultivate their land.

Furthermore, this bill fails to address the root causes of land reform and will ultimately lead to more government control over the economy and social structure of our country. Instead of taking a shortcut through expropriation, our government should work to improve access to credit and provide incentives for voluntary land redistribution.

Additionally, we believe that the proposed expropriation bill will have a detrimental effect on foreign investment in South Africa. Without secure property rights, investors will be hesitant to invest capital in the country, leading to stunted economic growth.

In conclusion, while we agree that land reform is necessary, it must be carried out in a manner that respects private property rights and that will promote the principles of a free market economy. We believe that the proposed expropriation bill in its current form fails to meet these criteria and poses a threat to individual freedom, economic growth, and foreign investment in South Africa. We urge government to reconsider this bill and work towards more sustainable and equitable solutions for land reform in South Africa.

Thank you.

Annexure 6: Chriszaan Du Plessis, Freedom Front Plus

ANNEXURE 6

SUBMISSION:

**CHRISZAAN DU PLESSIS
FF PLUS**

*David
No ones father
will ever
have property
rights?*

Economic effects

According to Agri SA, primary agriculture represents 2,5% of the GDP and secondary agriculture approximately 15%.

These two constitute a food system which makes up approximately 17% of the GDP of South Africa.

Further according to Agri SA, **Farmers** of this country manage to create close to a million jobs currently.

1 MILLION JOBS.

If one takes a moderate ratio of one to three, calculating the independents of employees on farms, **4 million South Africans depend on the income from farmers.**

In a country where unemployment is sky-high – It would be irresponsible if the government

Property owners and the agricultural sector in particular contributes to the tax revenue for the government and potential loss of potential tax revenue will have severe tax implications for the government.

The Expropriation Bill in its current form will have a negative impact on our economy (GDP), job security and tax revenue that will result in a sharp decline in our economic growth rate.

The erosion of property rights in South Africa will create uncertainty, which will inevitably divert potential investment, both foreign and local investments, away from the country.

~~A favorable economic environment, which is a requirement for stimulating employment and investment is dependent. Amongst other things, on a strong constitutional guarantee of private property ownership as a fundamental premise.~~

Food Security

Where a food system comes under pressure because of unfavorable expropriation legislation,

food inflation may increase and lead to massive food insecurity.

Another major economic effect that may flow from a nil compensation-policy, is the potential detrimental damage to South African banks. If agricultural clients (and other owners of property as described by section 25 of the Constitution), cannot pay back their loans due to receiving nil compensation for expropriated property, it will leave the banks directly exposed to failure.

Annexure 7: Louis van Wyk, Freedom Front Plus

ANNEXURE 7

Chriszaan du Plessis
Valerie de Kock
Louis van Wyk

As representatives of the Freedom Front Plus

Inputs to the National Council of Provinces

31 May 2023

Introduction

The motivation of the Expropriation Bill and specifically the provision of nil compensation is based upon the view that current policy instruments and the willing buyer and willing seller-policy are hindering effective land reform. This view presupposes expropriation with nil compensation is needed to ensure effective land reform under certain circumstances. It is in this case viewed by the governing party that the Act of 1975 is outdated and predates the Constitution.

This view, is however not the case and lessons from Zimbabwe and Venezuela should be kept in mind where their land policies had disastrous consequences on their respective economies.

The Construct of property rights.

“Property” according to the Roman-Dutch law as well as the English common law, which form the basis of the South African law of property, is all things that can form part of a person’s estate.

It is the “rights of people in or over object or things”.

These rights include the right to own a house, farm shares, motor vehicle or intellectual property.

The protection of these rights is well vested in our Constitution as well as in international practices.

That said, it is important to take note of how the Constitution in South Africa describes the concept of property. Section 25(4)(b) stipulates that property and the definition thereof is not limited to land alone and may include all movable and immovable property to be expropriated.

These rights also affect the holder of the rights ability to bond the specific right be that through a security agreement, credit guarantees or express real security.

The best-faring economies in the world used this system to build wealth and economic growth.

A strong constitutional guarantee of private property ownership is a requirement for stimulating employment and investment to create a favorable economic environment.

Nil compensation

Some politicians justify expropriation without compensation by arguing that landowners do not make land available for land reform or that they want compensation that is inflated and thus not affordable. 92% of claimants in the land restitution program, opted to receive financial compensation instead of the land claimed. Claimants prefer financial compensation and not land.

The beneficiary’s preference to financial compensation causes inflated land prices and not the land owners. This is confirmed by the annual reports of the Commission on Land Reform.

The data of settled claims reveals that amounts had been paid for land and then additional amounts were also paid to beneficiaries who did not want the land, but preferred financial compensation instead.

Most countries constitute require compensation.

Denmark, Norway, Russia, Kenya Lesotho and the Seychelles require full compensation.

In Egypt, France, Madagascar, Rwanda and Tanzania require fair compensation where a balancing test applies.

The Central African Republic, Congo, Japan, Mozambique, Namibia, Poland, Senegal and the USA require equitable compensation.

Botswana, Malta, Uganda and Zambia require adequate compensation.

The modern approach to compensation where individuals has to bear a sacrifice for the common good, being the loss of property, their individual and excessive burden should be compensated by the community being the State.

If South Africa do not follow this principal of equality, we will be out of step with most constitutional democracies.

Economic effects

According to Agri SA, primary agriculture represents 2,5% of the GDP and secondary agriculture approximately 15%.

These two constitute a food system which makes up approximately 17% of the GDP of South Africa.

Further according to Agri SA farmers of this country manage to create close to a million jobs currently.

If one takes a moderate ratio of one to three, calculating the independents of employees on farms, 4 million South Africans depend on the income from farmers.

Property owners and the agricultural sector in particular contributes to the tax revenue for the government and potential loss of potential tax revenue will have severe tax implications for the government.

The Expropriation Bill in its current form will have a negative impact on our economy (GDP), job security and tax revenue that will result in a sharp decline in our economic growth rate.

The erosion of property rights in South Africa will create uncertainty, which will inevitably divert potential investment, both foreign and local investments, away from the country.

A favorable economic environment, which is a requirement for stimulating employment and investment is dependent. Amongst other things, on a strong constitutional guarantee of private property ownership as a fundamental premise.

Food Security

Where a food system comes under pressure because of unfavorable expropriation legislation, food inflation may increase and lead to massive food insecurity.

Another major economic effect that may flow from a nil compensation-policy, is the detrimental damage for South African banks. If agricultural clients (and other owners of property as described by section 25 of the Constitution), cannot pay back their loans due to receiving nil compensation for expropriated property, it will leave the banks directly exposed.

Government Land

Government is in possession of enough land to carry such land over to beneficiaries.

The issue with government land which amounts to at least 17 million hectares of land in South Africa, lies in the fact that it is not being transferred to beneficiaries of land reform as the Bill wants to achieve by expropriating for the sake of (among others) public interests.

Conclusion

The Freedom Front Plus rejects the Bill as it is in sharp contrast to our party's beliefs of a free and market-based economy which has proven worldwide to be the best form of economic policy when it comes to uplifting the poor. The Freedom Front Plus also rejects the ideologically driven views set out in the Bill and propose that production and food security must be the sole priorities when land reform is implemented. But most importantly, the Freedom Front Plus believes that land reform in South Africa must take place within the safety framework of our Constitution.

**Annexure 8: Councillor C. Kalamer, Andi Wolmarans. Lieb Liebenberg,
Freedom Front Plus Party**

ANNEXURE B

EXPROPRIATION BILL

With this letter we as Vryheidsfront Plus Party want to bring the following points to your attention.

The motivation of the Expropriation Bill and more closely focussing on the provision of nil compensation is based upon a view that current policy instruments and the willing buyer willing seller policy are hindering effective land reform. This view presupposes expropriation with nil compensation is needed to ensure effective land reform under certain circumstances. Currently the landowners does not want to sell his/her property let alone give it away for nil compensation

This gives rise to the following two questions:

- (i) How much land is readily available for this reform programme and
- (ii) Will the reform programme with nil compensation really hit its mark as we see many programmes fail even in the planning phase. Is this really a necessary bill to pass

Politicians argue that there is an unwillingness from landowners to make land available, but to really get down to it, people do not want to give land away that has been in their legal possession for decades, even centuries.

Even more interesting is that claimants involved in the programme actually want the money, not the land,(above 90% of claimants) so this brings the question, why do they have to force such a bill.

The Commission on Restitution of Land Rights report to this fact of preference is given to money compensation above land owning. The data show some "double payments" - payments made for the land restitution and also to claimants

In 2013/2014, the land cost was inflated with R 478 164 009 or 30,28% and in 2014/2015 with R 1 000 691 810 or 56,29% due to the preferred financial compensation.

This is further escalated by the question, if there is still outstanding money owed to banks or financial institutions for said piece of property/land, who will be liable to pay the outstanding amount? Will it be The current owner or will the Government take over this amount and with its current financial system in tatters how will this be done?

The Land Audit: A Transactions Approach Report (November 2017) found that

twice as much land was transferred to black entrepreneurs and farmers through ordinary commercial purchases than what the state had managed to buy for black owners as part of its land redistribution programme.

This point shows that there is more than enough land for this programme in Government possession and it does not justify nil compensation to privately owned land. They own plenty hectares of land.

As an example in Northern KZN there are some 36 farms that were given to upcoming farmers but within a few years 29 of said farms were taken back as no production was done on those farms. This begs the question why does the Government still want to catty on with the expropriation bill.

Fraud and corruption regarding land reform projects have led to the failures with land reform.

With the idea of Nil compensation it will erode the value of property in total in SA. This will in turn hinder potential investment in our Country. And result in further economic down fall in South Africa and lead to job losses and food security.

The proposed land expropriation without compensation has already caused huge damage by deterring direct foreign investments.

And local investment has also been negatively affected. Farmers and banks will/ could suspend further investment in property as Nil compensation is on the horizon and nobody will get returns on investments.

To solve the land issue, the following is needed instead of any expropriation without compensation:

1. A proper land audit is needed to provide clarity on land reform in South Africa and to formulate a clear strategy for a land redistribution plan.
2. The supporting documents show nobody stole any land and is in legal possession of said land.
3. Article 17 of the United Nations Universal Declaration of Human Rights recognises private ownership of property and it prohibits expropriation without compensation and it must be complied with.
4. The principle of "willing buyer willing seller" must be applied in the land reform process.

5. The state must make the more than 4 000 farms currently in its possession, which it obtained through land reform, available to black farmers along with the relevant title deeds.

6. State-owned land (17 million ha) must also be made available and used for land reform. Before State takes from private owners.

7. Politicians must immediately stop making ideological and populist statements about land and must stop falsely accusing white farmers in particular.

8. Corrupt officials must be dismissed at once and competent officials who will be able to effectively, professionally and quickly finalise the administration of land reform, must be appointed.

Your truly

CIIs C Kalamer, Andi Wolmarans, Lieb Liebenberg
Vryheidsfront Plus Harrismith, Bethlehem area

Annexure 9: AfriForum, Johan van der Merwe



AfriForum's submission to the

Portfolio Committee on Public Works and Infrastructure on the Expropriation Bill of 2020 [B23-2020]

by Johan van der Merwe

1 MARCH 2023

Content

1. Introduction	1
2. The unlimited power of the Minister to expropriate any property	1
3. Expropriate now, argue later (still unresolved)	4
4. The issue of expropriation without compensation.....	8
5. The plight of homeowners	11
6. Urgent expropriations	13
7. Conclusion	14

1. Introduction

- 1.1 We submit our submissions on the Expropriation Bill B 23-2020 (the Bill) with this document.
- 1.2 This document is a revised version of AfriForum's commentary that was dated 9 February 2021, the day upon which the Bill served for consideration before the National Assembly.
- 1.3 We submit that this Bill should not be adopted as an act of Parliament under the broad consideration that its adoption will have a devastating impact on all South Africans' lives in the contexts of homeownership, food security and economic devastation.
- 1.4 We will also demonstrate that various sections of the Bill are unconstitutional and could be successfully challenged in the courts if the Bill is not revised before its adoption.

2. The unlimited power of the Minister to expropriate any property

- 2.1 The Bill defines *property* as the definition contemplated in section 25 of the Constitution. Notably, section 25 does not exactly define property, except to note that government's expropriation powers are not limited to the expropriation of land.¹ It stands to reason that the Bill's purpose in defining property as such is to also include movable and intellectual property.
- 2.2 Various constructions in the Bill support this interpretation; for example, section 5(1) of the Bill compels government to investigate the proposed expropriated property's suitability before issuing an expropriation notice. Section 5(2) then proceeds with a proviso that states that "if the property is land", government must appoint a valuator. The inclusion of this proviso supports the interpretation that the Bill will give government the power to expropriate any form of property.²
- 2.3 Section 3(1) gives the Minister of Public Works and Infrastructure (the Minister) the power to expropriate property for itself, or at the behest of another organ of state if this expropriation is "for a public purpose" or in "public interest".
- 2.4 According to section 1 of the Bill, *public interest* is defined as "the nation's commitment to land reform, and to reforms to bring about equitable access to all South African's natural resources to redress the results of past racial discriminatory laws or practices."

¹ See section 25(4)(b) of the Constitution.

² A similar construction is used in section 7 of the Bill.

- 2.5 *Public purpose* is defined as that it “includes any purposes connected with the administration of the provisions of any law by an organ of state.”
- 2.6 Section 3(3) of the Bill states that the property to be expropriated applies to property connected to “the provision and management of the accommodation, land and infrastructure needs of an organ of state, in terms of the Minister’s mandate.”
- 2.7 We noted in our previous commentary that the inclusion of these words create ambiguity in the Bill. On the one hand, the definition of *public interest* includes government’s redistributive policies, and *public purpose* includes administering any law by an organ of the state. However, on the other hand, expropriation is limited to property falling within the Minister’s mandate. We accept that this implies procurement of land and buildings for state organs and maintaining these buildings.
- 2.8 The definitions are broad enough to encompass wholesale expropriation of any property, albeit immovable, movable or intellectual property. However, the Minister is limited to its mandate as provided in section 3(3) of the Bill. Notably, the Bill does not define what the Minister’s mandate is, nor does it refer to any empowering provision where the scope of the Minister’s mandate is explained. For purposes of this commentary, we assume that government’s power to expropriate is the wide powers explained below.
- 2.9 Notably, section 2(1) of the Bill prohibits any arbitrary expropriation or expropriation that is not in public interest or is not for a public purpose. This limitation has no value, as both definitions are broad enough to encompass any redistributive policy and the administration of any law by any organ of the state. For example, the redistributive policies include the vesting of mineral rights in the state,³ the administration of the extensive social grants system,⁴ the proposed national health insurance scheme⁵ and land reform policies.⁶ This Bill will give government the power to expropriate any property in pursuance of administering these various laws, to name but a few.
- 2.10 At first glance it may seem an overstatement; however, government suggested in the past to seize pension funds to fund infrastructure development,⁷ and the ANC stated in their

³ Section 3(1) of the Minerals and Petroleum Resources Development Act 28 of 2002.

⁴ Social Assistance Act 13 of 2004 as administered in terms of the South African Social Security Agency Act 9 of 2004 (SASSA).

⁵ National Health Insurance Bill B 11-2019.

⁶ Land Reform (Labour Tenants) Act 3 of 1996.

⁷ *BusinessTech*. 2019. Government’s plan to go after pension funds could financially ruin South Africans.

11 September. Available at <https://businesstech.co.za/news/finance/340085/governments-plan-to-go-after-pension-funds-could-financially-ruin-south-africans/>

2019 election manifesto that government would investigate and consider using so-called “prescribed assets on financial institutions” to fund social and economic development.⁸ At the least, government has a concerning interest to access large pools of funds held in the private sector to fund its policies, which makes the broad definition of *public interest* in the Bill a cause for concern.

2.11 For example, consider the urgent expropriation powers that are granted in terms of section 22 of the Bill. If we hypothesise that this Bill was an Act in the current national state of disaster (due to the electricity crisis),⁹ this section of the Bill would allow government to urgently expropriate any property in the case of a national state of disaster.¹⁰ Under the broad powers to expropriate under this Bill, government could unilaterally expropriate any electricity-generating equipment, or even – under the broad definition of property – the patents for and intellectual property of these equipment.

2.12 The culmination of the above considerations leads us to conclude that the broad power to expropriate – not only in the form land redistribution policies but also wholesale redistribution policies of government – poses a threat to property rights.

2.13 It is also submitted that giving the Minister such a broad scope of power to expropriate property renders section 3(1) of the Bill unconstitutional. *Arbitrariness* has been interpreted before by our courts to mean that there is no rational connection between the purpose of the expropriation and the expropriation.¹¹ The broad powers granted by the Bill do not clearly define what circumstance would qualify as “public interest” or “public purpose” to a minimal degree of certainty to apply a cohesive rationality test. As explained above, there are countless administrators of countless acts of Parliament by government departments and agencies. Such a low bar of scrutiny, we submit, will not pass the limitation requirements of section 36 of the Constitution.

⁸ African National Congress. 2019. *Let's grow South Africa together*. 2019 election manifesto. Available at https://cisp.cachefly.net/assets/articles/attachments/77065_6140_anc_manifesto_booklet_a5_digital.pdf.

⁹ GG43096, number 313 dated 15 March 2020.

¹⁰ S22(2)(a) of the Bill. We will deal with s22 of the Bill at length later in these comments.

¹¹ See:

- *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service and another* (CCT19/01) [2002] ZACC 5; 2002 (4) SA 768; 2002 (7) BCLR 702 (16 May 2002);
- *First National Bank of SA Ltd t/a Wesbank v Minister of Finance* 2002 (4) SA 768 (CC) and *Bisst v Buffalo City Municipality* 2005 (1) SA 530.

- 2.14 The currently overbroad description of the Minister's powers does not allow us to scrutinise the limitation, the relation between the limitation and its purpose or to assess any restrictive means to achieve the purpose as set out in section 36(1) of the Constitution.
- 2.15 An instructive passage on this point comes from the judgment of *Case and Another v Minister of Safety and Security*, which stated, in determining overbreadth that it considers "the virtually unlimited range of unconstitutional potential application of the Act [to overwhelm] whatever permissible proscription might be identified".¹² We submit the Bill is subject to the same objection, the potential unconstitutional applications overwhelm the few, possible, justifiable instances.
- 2.16 With such a broad range of powers, citizens are left with a judicial review of an administrative act, namely the decision to expropriate property in terms of the Promotion of Administrative Justice Act 3 of 2000, which does not offer citizens sufficient protection, as argued in the following section.

3. Expropriate now, argue later (still unresolved)

- 3.1 In its previous form, section 21 regulated the dispute resolution mechanism that regulates the procedure if the expropriating authority and the owner cannot agree on the amount of compensation. This is now contained in section 19.
- 3.2 The previous version of the Bill set out the rights of the "expropriated owner" to dispute the various steps taken in the expropriation process; section 21(8) of the previous version of the Bill provided that, if any dispute is pending concerning the determination of just and equitable compensation that must be paid in terms of section 12, the lodging of the dispute does not preclude the operation of section 9.
- 3.3 We are encouraged to see that section 21(8) of the previous version of the Bill has since been removed in its entirety.
- 3.4 Section 19(8) (the equivalent provision in the new Bill) now reads that an appeal against the decision of the court on the amount of compensation payable does not prevent the

¹² *Case and Another v Minister of Safety and Security; Curtis v Minister of Safety and Security and Others* 1996 (3) SA 617 (CC) at par. 77.

expropriation from proceeding; however, the owner may seek an interdict if there are compelling prospects of success on appeal.

- 3.5 Section 9 (the provision relating to the transfer of rights) is not subject to section 19, and therefore, despite the removal of section 21(8) from the old version of the Bill, we submit that the new section 19(8) is a convoluted reformulation of the same principle in the previous version.
- 3.6 First, there is no express provision that section 9's operation is suspended during any dispute resolution processes under section 19.
- 3.7 Second, there is no express provision that any litigation that pertains to the decision to expropriate – for example a judicial review under the Promotion of Administrative Justice Act 3 of 2000 – suspends the operation of section 9.
- 3.8 If there is no provision that suspends the operation of sections 8 and 9 in the event of a dispute over the compensation amount, what is the purpose of including a provision that the operation of the expropriation notice during the appeal process can only be suspended through an interdict?
- 3.9 Does this imply that the section 8 notice is suspended before the court hands down a judgment on the compensation amount? If so, we suggest that the Bill should make it clear by including a provision in section 9 that section 9(1)(a) is suspended until the court has made a decision under section 19 of the Bill, subject to the provision of section 19(8).
- 3.10 If this is not the legislature's intention, we submit that section 19(8) of the Bill is unconstitutional.
- 3.11 Akin to section 164 of the Tax Administration Act 28 of 2011, which provides that a tax obligation remains due to the South African Revenue Service pending any objection or appeal (colloquially referred to as "pay now, argue later"), the Bill creates a similar mechanism through which property can still be expropriated effectively, despite a pending review or judgment.
- 3.12 This aspect of the Bill is manifestly unjust. *Expropriate now, argue later* is a complete consolidation of government power to confiscate property without judicial oversight.

- 3.13 We submit that section 19(8) of the Bill is unconstitutional insofar as it allows for expropriation before the amount of compensation is either agreed upon or determined in a court of law, as it amounts to an unconstitutional form of “self-help” by the state to take property without judicial oversight.
- 3.14 From the outset, it is unconstitutional when considering the wording of section 25(2)(b) of the Constitution: “... subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.” A cursory reading of this section logically implies that the determination of compensation, either agreed to or ordered by the court, is the precondition for expropriation. On this basic construction of section 25(2)(b) of the Constitution, section 21(8) of the Bill stands to be declared unconstitutional.
- 3.15 Section 19(8) of the Bill is also unconstitutional if one considers the judicial sentiment that reigns in our courts. In the case of *University of Stellenbosch Legal Aid Clinic v Minister of Justice*,¹³ the Constitutional Court declared sections 65J(2)(a) and (b)(i) of the Magistrates Court Act 32 of 1944 – which allows for the issuing of emoluments attachment orders without judicial oversight – unconstitutional. The majority judgment, penned by Cameron J, held (in the context of executing judgment in attachment) as follows:¹⁴
- It has been established in the jurisprudence of this court that execution of court orders is part of the judicial process. It requires judicial oversight. Though previous cases dealt with debtors’ homes, the principle underlying them was that judicial oversight of the execution process against all forms of property is constitutionally indispensable. Clearly then, the fundamental principles relating to the proscription of self-help flowing from the s34 right of access to courts apply, with equal force to the execution process.
- 3.16 Even though the ratio of the judgment applies to citizens horizontally, section 8 of the Constitution guarantees that any right in the Bill of Rights is enforceable against the state, and this includes a vertical application of the right of citizens to have a dispute in terms of the expropriation of their property to be decided in a court of law. The Constitutional Court has consistently applied this principle in judgments such as *Gundwana v Steko Development*

¹³ *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* 2016 (6) SA 596 (CC).

¹⁴ *Id.*, at par 129.

and Others,¹⁵ *Chief Lesapo v North West Agricultural Bank and Another*,¹⁶ and *Jaftha v Schoeman and Others; Van Rooyen v Stolz and Others*.¹⁷

- 3.17 In the context of criminal procedures, section 21 of the Criminal Procedure Act 51 of 1977 provides that someone's property may only be seized with judicial oversight in the form of a search warrant issued by either a magistrate or a judge. Of course, section 22 of the same act – which only applies in limited circumstances – does not require oversight. Still, that limitation is justified in exceptional circumstances in terms of section 36 of the Constitution and is the exception rather than the rule.
- 3.18 Preservation of property in terms of section 163 of the Tax Administration Act 28 of 2011, provides for SARS to attach property if it suspects that it would be disposed of to frustrate the collections of taxes, but only once authorised to do so by order of the High Court upon finalisation of an *ex parte* application.
- 3.19 Prohibiting the state and government from summarily expropriating its citizens' property without lawful cause and the oversight of an independent judicial officer strikes the core of a republic governed by the rule of law.
- 3.20 Kriegler J held in the judgment in *Phoebus Apollo Aviation CC v Minister of Safety and Security*¹⁸ that the protection of property in the Constitution is "aimed at protecting private property rights against governmental action ..." Any act which runs incongruent with this basic purpose of section 25 of the Constitution cannot pass constitutional muster; it axiomatically runs against the purpose of this right.
- 3.21 In *Premier, Eastern Cape v Cekeshe*, Madlanga J held the following in respect of section 25 of the Constitution:¹⁹

In my view, this section calls for more careful consideration of all relevant factors before the relevant administrative functionary take a decision adversely affecting the property rights of an individual as a failure to do so may result, not only in a violation of the *audi alterem partem* rule but also in the violation of the right entrenched in s25.

¹⁵ *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC).

¹⁶ *Chief Lesapo v North West Agricultural Bank and Another* 200 (1) SA 409 (CC).

¹⁷ *Jaftha v Schoeman and Others; Van Rooyen v Stolz and Others* 2005 (2) SA 140 (CC).

¹⁸ *Phoebus Apollo Aviation v Minister of Safety and Security* 2003 (2) SA 34 (CC) at par 4.

¹⁹ *Premier, Eastern Cape and Others v Cekeshe and Others* 199 (3) SA 56 (Tk).

3.22 On a preponderance of the relevant available authority and judicial sentiment related to the rights entrenched in section 25 of the Constitution, it overwhelmingly supports the submission that the self-help provision in section 21(8) of the Bill is not constitutionally sound.

4. The issue of expropriation without compensation

4.1 It is unfortunate that the Bill persists with its notion of nil compensation, or expropriation without compensation.

4.2 Section 12 of the Bill provides that compensation for expropriation must be just and equitable, balancing public interest and the expropriated owner's interest. Section 12(3) makes provisions for nil compensation to be paid, subject to certain considerations. We have two separate issues in respect of section 12 of the Bill: First the existence of the possibility of nil compensation; and second, the limitation of what may be considered when making an offer for compensation.

4.3 **Is there a valid reason for a law that states that government can expropriate citizens' property without compensation?**

4.3.1 The answer remains no. There is a myriad of reasons why there is no place for such a law in a society governed under the rule of law, human rights and dignity, equality and freedom.

4.3.2 Domestically, the wording of section 25 of the Constitution does not allow for expropriation without compensation. It reads that "property may be expropriated only in terms of law of general application, for a public purpose or in the public interest; and subject to compensation" (own emphasis) which is agreed upon or decided by a court. It does not require extensive interpretive logic to conclude that the use of the word *and* in section 25 requires the expropriation of property to comply with the qualification for public purpose or interest, and compensation payable.

4.3.3 No construction of section 25 can ignore the meaning of the word *and*, which makes payment of compensation a peremptory requirement for expropriation to be constitutionally permissible.

4.3.4 The FNB-judgment²⁰ confirmed that all three conditions present in section 25(2) must be complied with collectively, together with the condition set out in section 25(1), which prohibits government from acting arbitrarily.

4.3.5 Internationally, the preponderance of authority dictates that nil compensation is not a norm applied in the society of nations. What follows is a list of constitutional clauses considered:

4.3.5.1 The Fifth Amendment to the United States of America's Constitution states:²¹

... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

4.3.5.2 Article 14(3) of the Basic Law for the Federal Republic of Germany states:²²

Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation.

4.3.5.3 Section 8(1)(b) of the Constitution of Botswana states:²³

No property of any description shall be compulsorily taken possession of [...], except where the following conditions are satisfied –

[...]

(b) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of adequate compensation.

4.3.5.4 Article 16 of the Namibian Constitution states:²⁴

The State or competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with the requirement and procedures determined by an act of Parliament.

4.4 Section 12(3) of the Bill is unconstitutional under section 36 of the Constitution. The first metric that section 12(3) must pass is that the limitation of the right (in this case the right to compensation for expropriated property under section 25) must be reasonable and

²⁰ *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service and another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* 2002 (4) SA 768 (CC).

²¹ Available at <https://constitution.congress.gov/constitution/amendment-5/>.

²² Available at <https://fra.europa.eu/en/law-reference/basic-law-federal-republic-germany-13>.

²³ Available at <http://www.commonlii.org/bw/legis/const/1966/1.html>.

²⁴ Available at https://laws.parliament.na/cms_documents/namibian-constitution-e77d13246a.pdf.

justifiable in an open and democratic society. By logical implication, this requires that similar democratic societies have similar limitations of similar rights. Based on a cursory consideration of the democratic societies cited above, the state's right to expropriation is categorically tied to the duty to pay compensation. No open and democratic society allows expropriation without compensation.

4.5 By this metric alone, section 12(3) of the Bill is unconstitutional and should be removed.

4.6 We have noted the argument that suggests that the Bill does not allow for expropriation without compensation because it states that sometimes the compensation is nil. This implies that the state does pay compensation, but the amount is simply Ro.00.

4.7 We state that this cannot possibly stand as a rational justification for including section 12(3) in the Bill and it is glib. The meaning of "without compensation" means that owners are not compensated for the expropriation of their property. One cannot pay Ro.00 (i.e., nothing) but then claim that you had indeed paid compensation, but that the compensation was simply nothing.

4.8 **Section 12(3) – What is considered when deciding on nil compensation?**

4.8.1 This section provides what considerations may be considered when the expropriating authority elects to offer no compensation.

4.8.2 The first matter is the use of the words *not limited to*. In a society governed by the rule of law as required by section 1 of the Constitution, government cannot be granted a wide discretion on which factors must be considered when expropriating citizens' property and not paying any compensation. Legal certainty as an incidence of the rule of law requires that citizens are entitled to know what government may or may not consider when contemplating to expropriate property.

4.8.3 The second matter is that the Bill authorises limitations on citizens' property rights for which no provision is made for in section 25(3) of the Constitution. For example, section 12(3)(a) states that nil compensation may be paid if the person is holding the property to only benefit from the appreciation of the property's value. Section 25(3)(a) also states that the use must be considered when considering compensation. The Constitution requires that the use merely be considered in determining the compensation amount. It does not

permit “use it or lose it” to become a lawful consideration for government to expropriate its citizens’ property without any compensation.

5. The plight of homeowners

- 5.1 Section 16 of the Bill deals with property subject to mortgage as security for loans. Section 9(1)(d) provides that if government expropriates a property subject to a mortgage bond, it is to be expropriated free of the said mortgage bond.
- 5.2 Section 16 of the Bill states that the expropriated owner or the mortgage holder must inform the state of the mortgage bond within 30 days after the notice to expropriate is given, failing which the compensation is paid to the Master. Section 18(3) states that if there is any dispute regarding a mortgage or deed of sale, the state may deposit the funds with the Master. The expropriated owner and the mortgage holder would then have to approach a court for an order as to who is entitled to the compensation.
- 5.3 This structure is not only arbitrary but is manifestly cruel.
- 5.4 This construction allows the state to take a person’s home and deposit the compensation (if any) with the Master, leaving that person destitute and fighting with the mortgage holder through litigation to claim the compensation which the person must use to find alternative housing. The state can leave countless citizens destitute by employing this bullying tactic, pitting citizens against one another to litigate about the compensation (if any) while their property is taken. The construction proposed in the Bill is unfair and mean spirited.
- 5.5 It is also of great concern that the current version of the Bill includes a new section 12(5), which provides that the expropriating authority must consider outstanding rates and taxes and levies due on the property when it determines the compensation amount. Again, outstanding balances due on mortgage loans are not included.
- 5.6 It is patently unfair for the state to bail out the debts due to itself in the form of rates and taxes, while not compensating citizens whose properties are being taken, and to force these persons to repay loans for properties that they no longer have, while also leaving the mortgage holder without security for these claims.

- 5.7 We suggest that section 12(5) be amended to at least include that the state must consider outstanding balances due to mortgage holders when determining the amount of compensation. It is not fair to leave citizens with debt for properties that they no longer own.
- 5.8 This section of the Bill is also unconstitutional as it infringes on a citizen's right to housing under section 26 of the Constitution if this section is applied to residential property. Our positive law is inundated with case law, where it was ruled that attaching or taking a person's residential immovable property must be the last resort and must be subject to judicial oversight. These cases are *Gundwana v Steko Development and Others*,²⁵ *Chief Lesapo v North West Agricultural Bank and Another*,²⁶ and *Jaftha v Schoeman and Others*; *Van Rooyen v Stolz and Others*.²⁷
- 5.9 It is important to note that the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act 19 of 1998 states that the court considers an order of eviction. It must consider alternative housing available, the occupier's personal circumstances and so forth. The Bill, however, remains silent on these considerations and does not address the right to housing, which might be infringed upon by exercising these powers.
- 5.10 Last, the impact of this Bill on the commercial banking sector must be considered seriously. Mortgages are the dominant security vessel used by commercial banks to secure their lending. If those security rights are not protected, the banks will become more conservative in granting home loans, which will result in less access to adequate housing for ordinary citizens. It will also damage investor confidence in South Africa.
- 5.11 The Banking Association of South Africa (BASA) highlighted some serious concerns when it commented on the proposed amendment to section 25 of the Constitution to allow for expropriation with no compensation. The direct cost of such a policy in the banking industry would amount to more than R1,6 billion in direct losses.²⁸ These indirect costs are not specified, but the risk of damaging investor confidence and the banks' balance sheets, as well as liquidity to fund large-scale investments pose incalculable risks to the economy.²⁹

²⁵ *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC).

²⁶ *Chief Lesapo v North West Agricultural Bank and Another* 200 (1) SA 409 (CC).

²⁷ *Jaftha v Schoeman and Others*; *Van Rooyen v Stolz and Others* 2005 (2) SA 140 (CC).

²⁸ Banking Association of South Africa. 30 January 2020. Comments to the ad hoc committee on the amendment of section 25 of the Constitution, p. 14. Available at <https://www.banking.org.za/submissions/>.

²⁹ *Id.*, p. 15 onward.

A serious concern is that a downturn in land-based properties' value initiated the 2008 economic crisis in the United States.³⁰

5.12 BASA also warns that any downturn in agricultural activity would result in greater hardship for the 22,3% of South Africans who live with food insecurity, and 11,8% of South Africans who live in hunger.³¹ Any increase in these percentages is unacceptable and must be avoided at all costs.

5.13 BASA also warned of the following consequences of expropriation without compensation:

5.13.1 On the assets held in the banking industry, there would be an absolute reduction in property held as collateral; property prices will fall, and the risk of the banks to lend money will increase, will require banks to retain more capital, and will trigger sovereign downgradings.³²

5.13.2 On the banking industry's liability side, there would be a reduction in foreign investment, which currently accounts for R368 billion of funding in the banking industry.³³

5.14 All of the above is evidence that this Bill will severely prejudice the South African homeowner by potentially collapsing the banking industry, not only affecting the current homeowners but the young citizens who buy property, pay off debts and use these assets to leverage their way out of poverty, provide education for their children and generally work for a better life.

6. Urgent expropriations

6.1 Section 20 of the Bill gives government the power to expropriate property on an urgent basis, which suspends the operation of the procedural requirements of sections 5, 6 and 7 of the Bill. Section 20 shortens the process by allowing government to exercise the right to expropriate and offer compensation within 30 days of giving notice.

6.2 The first problem with section 20 of the Bill is the proviso that if the expropriated owner disputes either the expropriation or the compensation tendered by government, the dispute is resolved in terms of section 19 of the Bill. We refer to this as the "expropriate

³⁰ *Id.*, p.3.

³¹ *Id.*, p. 12. These are the percentages submitted by BASA on 30 January 2020.

³² *Id.*, p. 15.

³³ *Ibid.*

now, argue later” aspect of the Bill which is, in our view, unconstitutional. We argue that the same argument can be used to declare section 20(5) unconstitutional.

- 6.3 The second problem is the grounds of urgent expropriation contained in section 20(2). Urgent expropriations are allowed when government declares a national state of disaster in terms of the Disaster Management Act 57 of 2002, or if the court grants such an order.
- 6.4 It is important to note the use of the word *or* in section 20(2) in that only the second ground makes provision for judicial oversight. The logical inference is that section 20(2)(a) – urgent expropriation in a national disaster – requires no judicial oversight. We repeat the same concerns as above regarding the lack of judicial oversight.
- 6.5 Section 20(2)(a) is also of concern, given that South Africa was in a national state of disaster for over 750 days since it was declared on 15 March 2020.³⁴ It recently entered into a new state of disaster, which is still ongoing.³⁵ If this Bill were an act, government would have had unchecked expropriation powers for almost one calendar year, without seeking judicial oversight in the expropriation of citizens’ property and without complying with the procedures set out in sections 5, 6 and 7 of the Bill. The experience of states of disaster in our recent past shows that these can be extended multiple times, and there is a great risk that these powers might be abused.

7. Conclusion

- 7.1 This Bill must not pass. Lawmakers currently have their fingers ready to press a red trigger that will ruin the economy, cruelly deprive citizens of their property without judicial oversight and destabilise the banking industry. The Bill will hurt every citizen of every race, culture and religion.
- 7.2 If government persists with the mechanism of expropriation without compensation and persists with the expropriate now, argue later mechanism, the Bill is unconstitutional and can be challenged.
- 7.3 Our rights to further comment remain reserved.

³⁴ Notice 313 of GG Notice 43096 of 15 March 2020.

³⁵ GN3020 in GG48009 dated 9 February 2023.

Annexure 10: Arnor Powell, AfriForum

ANNEXURE 10

Email: Pontiak@fsl.gov.za

Good morning **ARMOR POWELL AFROFORUM**

I am ..., and I am here as a representative of ...

This Bill should not pass because it will harm all South Africans' lives in regards to homeownership and food security, and will cause economic destruction. Furthermore, various sections of the Bill are unconstitutional and can and will be challenged in the courts, likely successfully.

If this Bill were to become law, it will ruin the economy, deprive citizens of their constitutional right to private property without judicial oversight and destabilise the banking sector. The destruction of the right to private property, that this Bill will enable, will have a very negative effect on foreign and domestic investment. This Bill's purpose cannot be construed as to 'right the wrongs of the past'. It only enables further wrongs to be committed in the present.

AfroForum, and our Gauteng members in the context of today's opportunity for comment, demand that this Bill not be passed and that the right to private property in this country be protected and not destroyed.

Annexure 11: Mrs. C H S van der Walt, OVS

ANNEXURE II

Portia Khunou

From: Ronel van der Walt <ronelvdw9@gmail.com>
Sent: Wednesday, 14 June 2023 13:04
To: Portia Khunou
Subject: Onteieningswet in die Vrystaat

You don't often get email from ronelvdw9@gmail.com. [Learn why this is important](#)

I am not supporting the new law.

Thank you.

Mrs. C H S van der Walt. Reitz, OVS

Annexure 12: PR Swanepoel

Portia Khunou

ANNEXURE 12

From: pr Swanepoel <prswanepoel0@gmail.com>
Sent: Wednesday, 14 June 2023 12:33
To: Portia Khunou
Subject: Onteieningswette

You don't often get email from prswanepoel0@gmail.com. [Learn why this is important](#)

Good day.

To whom this may concern.

Im a hard working southafrican citizen.

The one property i own is not even on my name yet. I am paying monthly over a period of 20 years ro pay this property of.

Why would you want to take something from me if i have ro work for 20 years ro pay this of.

I hope that this bill wont be approved.

Take unused government land and work with that.

Regards.

Annexure 13: Michael Prinsloo

Annexure 14: Leon Smith

Portia Khunou

ANNEXURE 14

From: Leon Smith <zoeybester@icloud.com>
Sent: Wednesday, 14 June 2023 12:17
To: Portia Khunou
Subject: Stealing land from legitimate owner with a title deed

[You don't often get email from zoeybester@icloud.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

You will then have to give it to the Koi even they don't have the title deed . You want to see war go ahead.

Sent from my iPhone