

Centre for Constitutional Rights: Submission on the Expropriation Bill 23 – 2020

2021 is the 30th anniversary year of CODESA.

Taking stock, we must ask ourselves to what extent have we achieved the vision that we set for ourselves during the CODESA negotiations and whether we are on the right path considering what we initially sought to achieve, and agreed upon in the 1993 and 1996 constitutions?

In the midst of the Covid-19 pandemic South Africa faces a number of critical challenges - including deteriorating race relations, rampant corruption, growing inequality and a failing economy.

But the biggest threat we currently face is the looming threat to *property rights* in South Africa posed by expropriation without compensation (EWC).

The Expropriation Bill is currently before Parliament and public participation on the Bill has been extended to 28 February 2021.¹ The Bill contains worrying and unconstitutional sections that will dilute the property rights of all South Africans - not just landowners or farmers, but of all property owners - including more than 8 million black South Africans who own their own homes.

The Centre for Constitutional Rights has raised a number of critical concerns about the constitutional issues arising from the Bill and has tabled these concerns to Parliament as part of the public participatory process.

Although the Bill has undergone many reviews and amendments through the years it remains contentious for a number of reasons. In its submission the Centre has, *inter alia*, raised the following concerns:

- It lists five circumstances under which 'nil compensation' (zero) could be paid when property is expropriated;
- This list, in terms of the Bill, is not exhaustive and could presumably be extended to include any number of other circumstances in which nil compensation might be paid for expropriated property;
- In its current form it offers government almost extensive and undefined powers to expropriate virtually any form of property - this includes intangible property such as copyrighted and patented property;
- The Bill lacks clear definition in a number of areas and provides very little in terms of oversight opportunity by experts to ensure fairness to ordinary South Africans;
- The Bill also provides no clear definition of a proper public consultation process and no definition of what is meant by the "public interest".

This Expropriation Bill clearly poses a serious threat to property rights which are a core requirement for all free and prosperous societies.

¹ <https://www.parliament.gov.za/index.php/press-releases/media-statement-public-works-and-infrastructure-committee-extends-deadline-written-submissions-expropriation-bill>

The Centre is of the view that section 25 of the Constitution (the property clause) as it is currently worded constitutes a proper framework for an effective process of land reform. The payment of fair and equitable compensation for expropriated property is not the main impediment to land reform. Rather, it is - in the view of the High Level Panel² chaired by former President Motlanthe the inefficiency, corruption and lack of resources of the responsible government departments.

EWC, and if the Expropriation Bill is adopted, might represent a crucial point in the history of post 1994 South Africa at which the country, decisively, turns away from the vision of genuine non-racial constitutional democracy on which our new society was founded.

In the Centre's view the Bill and EWC actually have very little to do with the implementation of an effective land reform process and are the latest manifestations of the ANC-SACP's National Democratic Revolution ideology.

The FW de Klerk Foundation will be presenting a separate submission on *these* aspects of the Bill and of EWC to Parliament early next week.

You can view the Bill and the Centre's submission here, as well as the link to the government page where you can provide your own comments, or submission, on the Bill:

Links:

<https://fwdeklerk.com/index.php/en/>

<https://www.gov.za/documents/expropriation-bill-b23-2020-15-oct-2020-0000#>

<https://www.parliament.gov.za/index.php/press-releases/media-statement-public-works-and-infrastructure-committee-extends-deadline-written-submissions-expropriation-bill>

² <https://www.parliament.gov.za/high-level-panel>