



**FW de Klerk**  
FOUNDATION

## **EXPROPRIATION IN A TIME OF TURMOIL**

The *Expropriation Bill* was published on 21 December 2018, with a timeframe of 60 days for public comment. Its timing - when virtually the entire country was on holiday - and its compressed timeframe for comments, predictably arouse suspicion.

At face value, the Draft Bill seeks to amend the *Expropriation Act* of 1975, which is in contradiction of section 25 of the Constitution in respect of two key provisions. First, the *Expropriation Act* makes reference to “public purpose” only, while the Constitution references “public interest” and “public purpose”. Secondly, the *Expropriation Act* refers to “market value”, while the Constitution refers to “just and equitable” compensation. Market value is but one consideration in the determination of just and equitable compensation.

Key concerns flagged by the Foundation in its submission to Parliament on 21 February include the following:

- Too loose a definition of “public interest”;
- Current politicalised definition of property rights, which will impact the passage of the Draft Bill;
- Loose parameters of negotiations between current property owners and the expropriating authority (Minister of Public Works), where land can be expropriated without an order of the court in the first instance. Courts are the final arbiter, but the prospect of long and costly litigation may act as a deterrent to some property owners.
- Procedure and determination of compensation favours the expropriating authority, including the prospect of awarding nil compensation in some cases, including if the land is occupied by labour tenants; is held for speculative purposes; is owned by the State; abandoned land and subsidised land.

Few are confident that the Draft Bill will be passed in the current sitting of Parliament. However, it is of grave concern to the Foundation that the Bill is on the national agenda at a time when the *ad hoc* committee on the amendment to section 25 to effect expropriation without compensation is high on the parliamentary and political agenda, and the contagion effect is already being felt. This, plus the upcoming elections are bound to have a negative impact on the Draft Bill. It may come to pass that the Draft Bill will be held hostage to a more fundamental shakedown of the property rights regime in South Africa. The Foundation has asserted all too often that this will have grave political and economic implications, as well as cause serious disruption to social relations in the country.

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