

Voluntary Report – Voluntary - Public Distribution

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Report Name: South Africa Proposes New Expropriation Law

Country: South Africa - Republic of

Post: Pretoria

Report Category: Agricultural Situation, Agriculture in the News, Agriculture in the Economy, National Plan

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Report Highlights:

The South African Ministry of Public Works and Infrastructure published and presented the Expropriation Bill to Parliament in October 2020. The 2020 Expropriation Bill provides the much needed update to the old Expropriation Act 63 of 1975, and ensures alignment to the current South African Constitution. The objectives of the 2020 Expropriation Bill is to provide for the expropriation of property for a public purpose or in the public interest. The 2020 Expropriation Bill also introduces new sections to provide for certain instances where expropriation with no compensation may be appropriate in the public interest. According to the 2020 Expropriation Bill property is not limited to land only. The Expropriation Bill is unlikely to be finalized in 2020 because there are several lengthy processes still to be undertaken. The impact of the Expropriation Bill to the agriculture sector and U.S. agricultural trade is still uncertain.

Background

On October 9, 2020, the South African Ministry of Public Works and Infrastructure published the Expropriation Bill, 2020. This Bill may be downloaded on the following link, https://www.gov.za/sites/default/files/gcis_document/202010/expropriation-bill-b23-2020.pdf. The 2020 Expropriation Bill provides the much needed update to the old [Expropriation Act 63 of 1975](#), and ensures alignment to the current [South African Constitution](#). The 2020 Expropriation Bill is required to set down a uniform process for all expropriations of property for a public purpose or in the public interest, as well as a uniform process to calculate just and equitable compensation.

Notably, expropriation of property, primarily land, has been a part of South African law for decades. According to the 2020 Expropriation Bill property is not limited to land only. The 2020 Expropriation Bill also introduces new sections to provide for certain instances where expropriation with no compensation may be appropriate in the public interest. The outdated [Expropriation Act 63 of 1975](#), will likely be repealed once the 2020 Expropriation Bill is finalized and implemented.

Expropriation Bill versus Constitutional Amendments to Expropriate Land without Compensation

The 2020 Expropriation Bill is separate from the on-going process to amend the South African Constitution to allow for the expropriation of land without compensation for the purposes of land reform. The Post GAIN Report titled, “Constitutional Amendments to Expropriate Land Without Compensation Moving Ahead ([Report Number SF2019-0038](#))” published in 2019 provides more analysis on the constitutional progress. According to the Constitutional Review Committee, the basis of amending the Constitution to allow for the expropriation of land without compensation, was to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs. Therefore, the key difference is that the 2020 Expropriation Bill is not aimed at expropriating property or land for land reform, but its objectives is for the expropriation of property including land for a public purpose or in the interest of the public, such as for building infrastructure, industrial development etc. Hence, the Expropriation Bill is under the mandate of the Ministry of Public Works and Infrastructure.

Process to Implementation

The proposed Expropriation Bill is unlikely to be finalized in 2020 because there are several lengthy processes still to be undertaken. **Figure 1** shows the outstanding steps (highlighted in red) prior to the finalization and implementation of the Bill. The public will have the opportunity to provide comments as Parliament considers, debates, and consults on the Bill.

Figure 1: Process for the Finalization and Implementation of the Expropriation Bill



Source: [Agricultural Business Chamber](#)

Commendations on the Expropriation Bill

Expropriation has been a part of South African law for decades. In the past, the state has expropriated land with compensation to build public infrastructure such as roads, hospitals, electricity grids etc. Some industry contacts have indicated that the proposed 2020 Expropriation Bill provides a constitutionally-sound mechanism to acquire property for a public purpose, especially in cases where the owner refuses or is reluctant to sell. In this regard, the proposed legislation has the potential to provide clarity on the legal processes that property or land owners may follow in the event that their property is identified for expropriation. Thus, some argue that the Expropriation will bring certainty to investors or property owners because it clearly outlines how expropriation can be done and on what basis. The Expropriation Bill has also been commended for being both administratively fair to property owners and protecting the state from paying exorbitantly as has happened in the past.

Concerns on the Expropriation Bill

If the 2020 Expropriation Bill is passed, it will mark the first time for South African policy to allow for the expropriation of property without compensation. This policy position may further be entrenched if South Africa also finalizes the ongoing Constitutional amendment process to allow expropriation of property without compensation for land reform purposes. As a result, there are concerns that the mere possibility of expropriation of property without compensation may reduce investor confidence by creating uncertainty around property ownership.

The 2020 Expropriation Bill, specifically the nil-compensation component has been challenged in Parliament as being unconstitutional by opposition political parties. In addition, the definition of ‘property’ in the Expropriation Bill as not being limited to land only has been argued to be open to wide interpretation and could mean that intellectual property, houses, shares, businesses and other movable property could be expropriated. As a result, some opposition political parties expressed concern that the 2020 Expropriation Bill does not provide assurances that property rights are secure in South Africa.

Expropriation and compensation have been argued to be administrative functions, as has been the case, and should only be referred to courts for disputes. Concerns have been raised that by mandating courts to determine compensation in each case, massive delays are expected. Other industry bodies have also highlighted the poor governance track record of the state or state institutions, and questioned their competence in implementing the 2020 Expropriation Bill without the risks of abusing this power, corruption, and misinterpretation.

Post Comments:

The impact of the Expropriation Bill to the agriculture sector is still uncertain. Post will continue to provide updates, especially when the public is invited to provide comments on the Bill.

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Attachments:

No Attachments.