



Expropriation Bill

Public Submission of the Democratic Alliance

23 February 2021

Introduction

The Expropriation Bill is one of the most consequential Bills to come before Parliament in the last few years. It has caused significant anxiety among many South Africans due to the disastrous effects of expropriation policies in neighbouring countries. The Democratic Alliance (DA) has serious concerns about the Expropriation Bill in its current form as the Bill could disenfranchise owners of all types of property in South Africa. We are also deeply concerned that the Expropriation Bill may discourage much needed investment in South Africa, particularly at a time when unemployment is at record high levels.

The Expropriation Bill has a long history in our legislature. It was first introduced in 2015, and after following the usual procedural processes was returned by the President twice – in 2016 and in 2017. The Bill was reintroduced on 15 October, and then referred to the Portfolio Committee on Public Works and Infrastructure. The DA has two members sitting on this Committee, both of whom are very active in the Parliamentary process. As members of Parliament, Samantha Graham-Maré, and Madeleine Hicklin will actively contribute and vigorously oppose the Expropriation Bill when it is comprehensively discussed in Committee.

On 10 December 2020 the Bill was advertised for public comment for a period of 60 days which ends on 28 February 2021. Concerned citizens and organisations can, after making written representations, request the opportunity to make oral submissions to the Committee.

As the DA, our supporters and society at large have serious concerns about the Expropriation Bill. While the DA supports the need for equitable land redistribution, we cannot support this Expropriation Bill in its current format. Due to our concerns, the party has taken the unprecedented decision to submit our own comments, objections and suggestions for improvement during the public comment process. We have also launched an online social media campaign to encourage all South Africans to make their own submissions to the Portfolio Committee on Public Works before 28 February 2021.

The DA's presentation encapsulates the concerns expressed by many South Africans across various sectors of our society. In the past, we have seen Parliament being turned into a rubber-stamping institution where the valid concerns of voters from opposition parties are merely ignored. We have legitimate concerns that the same will happen with the Expropriation Bill and resultantly, as the official opposition, we make this submission on behalf of the people of South Africa.

Comments on the Bill

The Bill has been drafted to repeal the Expropriation Act of 1975, in order to create a Constitutionally compliant process of expropriation. While many segments of society found the Bill to be less drastic than originally feared, subsequent careful analysis of the Bill has exposed a variety of concerns with the Bill that the DA highlights below:

1. Definitions

- The definition of “court” within Section 1 of the Bill under subsection (c) makes reference to cases concerning intangible property. This is the only time within the Bill that the concept of intangible property is referenced in the entire Bill. While references are made throughout the Bill to ‘land’ and the requirements for its expropriation, determination of compensation and occupation, there are no

further specific references made to intangible property. We believe that the determination of the value for intangible property would require specialist knowledge as issues surrounding patents and copyrights would be affected in this circumstance. We believe that this category of property should ideally not be included in this Bill, or alternatively the process for its expropriation by the state should be very clearly identified and addressed within the Bill.

- The requirement that expropriation be implemented when it is in the ‘**public interest**’ is insufficiently defined. The Bill should lay out further specifics outlining specifically what would constitute a situation being in the “public interest”.
- There is a lack of clarity as to what constitutes property for the purposes of expropriation. While the definition makes reference to property being defined in terms of Section 25 of the Constitution, this section is also vague on what property is covered by both the Section and the Bill. Until this has been properly defined, anything can be expropriated under this Bill.

2. State Land Expropriation

Section 2(2) provides that state-owned land may only be expropriated if there is concurrence from the executive authority responsible for the corporation or entity which owns the property. This provision allows the government to refuse to accede to expropriation, whereas private individuals are not afforded this same right. In a Constitutional democracy such as ours, it is not acceptable that the rights of an individual are less than that of government.

3. Damage Caused During Survey of Property

Section 5(7) relates to the damage which may be caused to the property during a survey. The Bill requires that the damage be repaired by the expropriating authority to a ‘reasonable standard’ or alternatively the affected person be compensated for the damage after delivery of demand by the affected person. We are concerned that the term ‘reasonable standard’ is vague, and no mention is made of who is to determine what constitutes a ‘reasonable standard’. The DA submits that the standard of repair should be as close to the original state as possible.

We further submit that the standard to which any repairs must be made, should be determined by an appropriately qualified built environment specialist who is registered with the professional body governing their area of expertise. All assessments conducted throughout this process should be undertaken by such a professional.

4. Lack of Consequences for a Failure to Respond

Section 6(3) requires that a Municipal Manager of a municipality in which area a property has been earmarked for expropriation, must respond to a request for information within 20 days of receiving such request. However, the section fails to clarify what recourse the expropriating body will have should the Municipal Manager fail to adhere to the requisite timeline. Further clarity should be provided on avenues of recourse available.

5. Determination of Compensation

Section 12 of the Bill deals with determination of compensation. Subsection (1) provides for the relevant circumstances to be taken into account when making the determination. However, this section fails to take into account encumbrances on the property, with particular respect to mortgages. While Section 18 addresses how the expropriating authority should make payment to the holder of a mortgage, it is our contention that the mortgage should form part of the initial assessment when determining the amount of compensation to be awarded as this will play a significant role in determining the value of the property to be expropriated.

This determination should be done by a suitably qualified and registered professional. Furthermore, the Bill should provide for engagement with a bank or the holder of a mortgage due to their significant interest in the property concerned.

6. Expropriation without Compensation

- Section 12(3) is the most contentious of the clauses as it lists circumstances under which nil compensation can be paid. The DA is concerned that the phrase contained within Section 12(3) stating “included but not limited to...” leaves open the door for an unlimited number of new circumstances to be introduced.

The DA suggests that either a more complete list is drawn up, or the list as it is be deemed sufficient. We do not believe it is acceptable for the phrase “including but not limited to...” to remain in the final Act. This open-ended phrase allows the government too great a freedom to determine any reason on the basis of ‘public interest’ to expropriate property.

- Section 12(3)(a) provides that nil compensation can be paid for land that is not being used by the owner, is not being developed and is merely used for investment purposes. This clause will prejudice investors and dissuade much needed investment in property for speculation purposes. This clause unfairly prejudices an individual’s right to hold property for investment purposes as such property will be targeted for expropriation for nil compensation.
- Section 12(3)(c) directly impacts the rights of property owners as it places control over land above the rights of title deed holders. The section determines that irrespective of whether a person is registered as the owner of a property with the title deeds thereof, if the person has “abandoned the land by failing to exercise control over it”, the land can be expropriated without compensation. In essence, this clause could create a fertile ground for land grabs and land invasions because once the land has been invaded by unlawful occupiers, the registered owner can be deemed to have lost control over the land.
- It is imperative that the Act provide a definition of what constitutes failure to “exercise control” over the land and that it also provides a detailed process which would be followed, with the requisite evidentiary requirements to determine if there exists a failure to exercise control over the land in question.

- The Bill requires in Section 2(3) that the State “attempt to reach an agreement” prior to exercising its right to expropriate property. The DA argue for an additional obligation that the State ‘negotiate in good faith’. This would ensure bona fide negotiations and processes are followed at all times.

7. Disputes Will only be Settled after Expropriation has Occurred

At present, a dispute regarding the amount of compensation will not prevent the transfer of ownership of an expropriated property. This may result in the deprivation of property from an owner, without a final compensation amount being agreed to. The Bill should require that compensation disputes are resolved prior to any property ownership transfers. Any court action launched by an individual under Section 21 of the Bill should halt the process of Expropriation until the dispute is settled.

8. Purpose of Expropriation

The Bill should outline the specific acceptable purposes and uses of land which is expropriated by the expropriating authority. At present, the Bill vests all property in the expropriating authority without stating clearly how this land should be used after the expropriation has occurred. The Bill should include specific provisions mandating the permissible uses for land which has been expropriated in order to avoid potential abuse of the expropriation mechanism by the state.

9. Delivery of Notice

A minor issue contained in Section 24(4) is that facsimile is deemed to be a suitable method of delivery of notice. Given the obsolete nature of this technology, it may be best to remove this and make use of email instead.

Conclusion

The contents of our submission outline the serious concerns the DA has about the Expropriation Bill as it currently stands before Parliament. While the DA supports the need for equitable land redistribution, we cannot support this Expropriation Bill in its current format. The DA is concerned that the Bill will erode property rights in South Africa and discourage much needed investment in our economy. The Bill has caused much fear and anxiety among the South African public, when our country instead needs to focus on creating an environment of strong property rights and high levels of investor confidence. It is deeply concerning that the Bill may disenfranchise owners of all types of property in South Africa, and not just landowners or farmers. The DA submits that the Bill requires further work to reign in its wide-ranging powers, or preferably be scrapped altogether.

