

CONSTITUTIONAL PROTECTION

Expropriation bill an upgrade, say analysts

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The contentious expropriation bill is not the draconian law property owners and investors may think it is, analysts say.

The bill, which President Jacob Zuma referred back to Parliament in February, citing lack of public consultation, will allow property, both fixed and movable, to be expropriated for a public interest as well as a public purpose. This has raised fears that large-scale expropriation could be used to accelerate land reform.

The ANC leadership is split on land reform, with Zuma saying the Constitution should be amended to allow for land expropriation without compensation. The ANC has decided to convene a meeting to deal with the issue before its policy conference in June.

Michael Evans, public law partner at Webber Wentzel, said that until now, land expropriation had been tackled in the expropriation legislation that predated the Constitution by two decades. "It is a draconian piece of legislation which confers extensive powers on the authorities [including government departments and municipalities] to expropriate. Little protection is given to property owners," said Evans.

He said the recent expropriation bill was introduced as a complete replacement for the expropriation act.

"The ... bill is vastly superior legislation in all respects and has been drafted in accordance with section 25 of the Constitution."

The two most important innovations related to the process that the authorities must launch before expropriating property, and the manner in which compensation was determined. He said there would be no "expropriation without compensation" for as long as section 25 of the Constitution, which protects the right to property, remains as is.

Ben Cousins, chairman of the Institute for Poverty, Land and Agrarian Studies and a senior professor at the University of the Western Cape, said on Monday the expropriation bill should not scare away investors.

"Of course, any law can be badly or inappropriately implemented, and the capacity of the state to implement laws and policies can vary a great deal. Currently, the capacities of the South African state are particularly weak.... However, the capacity of the new office of the valuer-general, key to the implementation of the Expropriation act, has not yet been tested," said Cousins.

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