

# Land grab a lengthy and cumbersome process

## “THE LONG WALK TO EXPROPRIATION”

*THIS IS PART 1 in a series of articles I will be writing regarding the Expropriation Bill, land reform, and expropriation with and without compensation.*

*In these articles I will be detailing the challenging and technical processes involved in expropriation (article 1), some of the key issues with the bill in its current format (article 2), as well as the potential impact on the banking and financial services sector and how that impact could be mitigated (article 3).*

THE EXPROPRIATION Bill is about the expropriation of all forms of property in the “public interest”.

The definition of property here includes land, but isn't limited to just land as the definition also includes buildings, immovable assets, roads and intellectual property (section 1.1.(c) of the bill).

Additionally, it is more accurate to understand that this bill deals with expropriation with compensation primarily, with just a few instances where expropriation without compensation can be pursued.

As the bill currently stands, there are numerous barriers and challenges to the speed at which expropriation can take place.

The accompanying infographic that I've created details what I am setting out below in text form. The infographic references specific parts of the bill from where these steps are drawn. A high-level overview of the process for expropriation as set out by the bill:

## EXPROPRIATION



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**Step 1:** A claimant makes a claim on a property (in this example, I use the word claimant to mean a person or legal entity that is a claimant, or the Expropriating Authority acting on behalf of the claimant. The Expropriating Authority (the “EA”) is defined within the bill as the Department of Public Works, but could also be a municipality or other organ of state.

**Step 2:** The property to be expropriated must then be valued by a professional valuer (in terms of the Property Valuers Act). If it is currently owned and occupied, the occupant can technically refuse entry to the property valuer. The claimant would then need to get a court order to force the occupant to allow entry into the property and begin the process of assessing and valuing the property.

**Step 3:** Now, if that property is land, the claimant may additionally have to consult with one or more of the following departments: rural development and land reform, environmental affairs, mineral resources

and water and sanitation, as well as any municipality and any other organ of state whose functions and responsibilities will be “materially affected” by said expropriation. During this stage, any of these departments or organs of state can express the first set of challenges to a potential expropriation.

**Step 4:** Get through those challenges and the EA must then serve something called an “Intention to Expropriate” to the property owner(s). New objections to this intention can be lodged by the owner, or any organ of state, at this point. This may happen, for example, on the basis that the amount of compensation being offered is not “just and equitable”.

**Step 5:** A period of negotiation and mediation could potentially follow, along with counter offers from the owner or organ of state to the EA. If any challenge isn't resolved through mediation, a court intervention will likely be necessary.

**Step 6:** If those issues are then resolved and the expropriation continues, something called a “Notice of Expropriation” is issued and delivered to the owner, the creditors (where the property has been pledged as security) and any organs of state affected.

**Step 7:** Once the due compensation is paid to all required parties, the property ownership then moves to the claimant.

**Step 8:** Unfortunately, even after the property is expropriated, the pro-

cess may not be fully concluded. If it is discovered that there are unregistered rights claims (ie a right to use land which was not required to be registered) against that property, there is another quite specific process dealing with how to deal with these claims (detailed in section 10 in the bill). If these rights are assessed by the EA as valid, compensation has to be paid to this party too.

Around each of these stages there's a fairly prescriptive process to be followed, with possibilities for time extensions permitted (section 25 of the bill). This can add on to time spent in courts and the 20 to 40-day notice periods allowable for various steps in the process (and note that day isn't defined as a calendar or working day. If day means working days, that stretches those periods out even further).

This lengthy and complex expropriation process seems to support one of two obvious interpretations.

Option one is that this bill is something that just so happens to be very poorly drafted, given the stated objective of land reform and property distribution.

Option two is that the bill isn't poorly drafted at all, and it serves its purpose well, it's just that the purpose would be to capture votes while not changing the status quo too much.

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