

Expropriation Bill brings clarity to processes of land restitution in SA

Land expropriation is recognised as legal in most countries, but disputes may arise, which is why a bill sets out rigorous processes to follow

By PATRICIA DE LILLE

● As the country embarks on another attempt at passing a land expropriation law that is in keeping with the constitution, many people may ask what the difference is between “nil compensation” and “no compensation”.

Theoreticians, described as individuals who twist logic to suit their needs, have lumped nil compensation and no compensation as old-style land grabs.

This cannot be further from the truth. As described in the Expropriation Bill, there are rigorous procedures and processes to arrive at nil compensation and no compensation. “Nil compensation” and “no compensation” can be best explained by first elaborating on the process of expropriation.

WHY EXPROPRIATION?

The total land surface in SA is about 122-million hectares. The constitution obliges the state to take “reasonable” legislative and other measures to enable citizens to gain access to land through a three-tier land reform programme: land redistribution, land tenure reform and land restitution.

Land tenure reform happens when protection is given to people whose tenure to land is legally insecure. This may apply to farm workers, and farm dwellers or township dwellers who never had titles for their houses, and people in the former homelands.

Land restitution happens when people who were dispossessed of their land by the Natives Land Act of 1913 are granted the right to claim their land back or to be entitled to just and equitable redress.

Land redistribution happens when people who need land, but cannot afford to buy it on the market, are enabled to gain access to it.

Despite efforts to transfer about 30% of the land back to the dispossessed by 1999, to date only about 10% has been transferred back to dispossessed people through land reform programmes.

LAND AUDITS

To understand and change the way land is being owned and managed and to redistribute it to landless and land-hungry South Africans, the department of rural development & land reform undertook two land audits to look at the extent of colonial land dispossession and apartheid forced removals.

The first determined the amount of land owned by the state or in private ownership and the second looked only at land in private ownership.

The 2013/2014 land audit found that 79% of SA’s land was in private ownership, 14% was owned by the state and 7% was unaccounted for. The second found that individuals, companies and trusts have a combined ownership of 90% of the total land audited.

The audit also reveals that whites own 72%,



Though the constitution obliges the state to take reasonable legislative steps to ensure access to land for all, so far efforts have only managed to restore 10% of land to dispossessed blacks. Picture: Michael Pinyana

coloureds 15%, Indians 5%, blacks 4%, others unidentified by race 3% and co-owners 1%.

Expropriation of property is a mechanism that may be used to acquire property for the benefit of the overall public. Property is not limited to land only. Section 25(2) of the constitution says expropriation of property can be done provided it is through a law of general application and for either of two reasons: for a public purpose or in the public interest.

Public interest is defined as including the nation’s commitment to land reform and reforms to bring about equitable access to all SA’s natural resources. Examples of public purposes are activities such as building dams, erecting power lines or constructing rail infrastructure.

The constitution recognises expropriation as a legal mechanism. The Expropriation Bill [B23-2020] provides the detail of how this may be done in line with the constitution.

NIL AND NO COMPENSATION

Because expropriation may happen against the wishes of the owners, the procedures in the bill create a thorough process that recognises and protects the rights of all who are affected. In accordance with the constitution, it requires that a just and equitable balance be struck between the public interest and the interests of those affected.

The bill sets out how compensation must be calculated and where and how decisions can be challenged. It includes a mediation process and it guarantees access to the courts as the final form of oversight and decision-making.

NIL

The Expropriation Bill recognises that there may be circumstances in which it is just and equitable in terms of section 25(3) of the constitution that the amount of compensation should be nil when land is

expropriated in the public interest.

In case of a dispute between the expropriator and expropriatee, the court is a final arbiter and the court will decide the amount of compensation, including when the state alleges that it would be just and equitable for nil compensation to be paid, and the owner disputes this. The decision of the court is final.

NO COMPENSATION

The bill has been misconstrued as permitting land grabs to redress the imbalances created by the discriminatory policies of the past. That is not the case. It does not permit the confiscation of property. All countries permit the expropriation of property. The constitution and the bill create the requirements and procedure for this in SA.

These processes and procedures bring certainty to South Africans and to local and international investors, clearly outlining on what basis land may be expropriated when this is for the purposes of land redistribution, land restitution and tenure reform.

The circumstances in which nil compensation could be paid were widely consulted on by me as an executive authority. Suggestions made during consultation enhanced the nil compensation provisions that are now covered by the Expropriation Bill, which is currently with parliament for parliamentary processes. The parliamentary processes include public consultation.

I therefore urge all interested parties to participate in the parliamentary consultation processes currently under way because it is vital that all South Africans and stakeholders have their say in this important endeavour we have embarked on.

The patience of our people is running out and it is time that the government’s land reform programme brings fairness and justice to all the people of SA.

* De Lille is minister of public works & infrastructure