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SOUTH AFRICAN
INSTITUTE OF
RACE RELATIONS

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27 March 2013

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The New Expropriation Bill is Better – But Still Bad

The Expropriation Bill is back. It is better than its 2008 predecessor in one key way, for it allows the courts to decide the compensation payable for expropriated property. This is a major advance. In many other ways, however, the Bill remains as bad as before.

The Expropriation Bill of 2013 (the Bill) is better than its 2008 predecessor in one key way, says the South African Institute of Race Relations, for it allows the courts – rather than the State – to decide the compensation payable for expropriated property.

The 2008 bill was clearly unconstitutional in seeking to oust the jurisdiction of the courts and make the Government the arbiter of the compensation to be provided on expropriation.

“The shift evident in the new Bill is thus a big step forward,” says the Institute’s head of special research, Dr Anthea Jeffery. “It also shows yet again the vital importance of the Institute, and other civil society organisations, in defending the Constitution against erosion of its guarantees.”

However, the new Bill – recently released for comment by the Department of Public Works – is as bad as its predecessor in various other ways. Among other things, the new Bill still:

- extends the power to expropriate from the minister of public works to government departments and other state entities at all three tiers of governance;
- applies to property of all kinds – not only land, but also business premises, mining rights, patents, and shares;
- allows an ‘expropriating authority’ to take ownership and possession of property before paying any compensation at all;
- states that compensation becomes payable only when its amount has been agreed with the State or decided by the courts; and
- puts great pressure on the expropriated owner to accept the amount of compensation offered by the State, rather than remain without the benefit of either the property or its value in money.

Says Dr Jeffery: “In practice, the option of applying to court to decide a different measure of compensation is likely to benefit only those with deep pockets – the relatively few who, despite the loss of their property to the State, can afford the cost of lengthy litigation with little guarantee of success.”

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Overall, the Bill reduces the compensation payable under the current Expropriation Act of 1976, which is based on market value, supplemented by damages for all resulting loss. It also greatly expands the scope for expropriation, increasing the chances of the State increasingly resorting to this drastic measure.

The Bill also contradicts the National Development Plan (NDP), which recognises the vital importance of secure tenure to land, mining rights, and the like. Yet the NDP is supposed to be the Government's policy blueprint and to have an 'overriding effect' on all policy choices.

Cautions Dr Jeffery: "The Bill gives almost all state agencies the power to take from farmers, firms, and ordinary people their most important assets – often their sole assets, built up over decades of endeavour. In return, less than adequate compensation will be provided. No matter how sparingly the Government may now intend to use the measure, once it has been put on to the Statute Book there will be little to prevent state agencies from resorting to it ever more often.

"The mere risk of this will be enough to unsettle the property rights of all South Africans. This in turn will deter investment, curtail economic growth, and make it harder still to overcome unemployment, poverty, and inequality."

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