



## **COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE EXPROPRIATION BILL [B 23B – 2020]**

The Law Society of South Africa (LSSA) constitutes the collective voice of approximately 30 000 attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and the Independent Attorneys in representing the attorneys' profession in South Africa.

### **1. INTRODUCTION**

The LSSA previously commented that redressing the past injustices through land reform and redistribution is imperative for the future of our country and the achievement of a just social order. The land debate is a pinnacle issue in our democracy.

It was our unreserved view that any legislation had to set out the parameters within which a system of expropriation, with or without compensation, should operate, and should be based on the fundamental values of the Constitution.

Having read and considered the Expropriation Bill [B 23B- 2020], the LSSA is of the view that the Bill in its current form is insufficient to deal holistically with the land issue.

### **2. GENERAL**

2.1 The LSSA notes that the Bill falls under the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure. We are of the view that a Specialist Constitutional and Land Affairs Committee would be more suitable to deal with the Bill.

2.2 The LSSA is of the view that the Bill is loosely drafted and fails to deal with substantive issues. The Bill creates uncertainty and insecurity in that:

2.2.1 It does not set out the parameters under which a system of expropriation can be established;

2.2.2 It sets out notices and notice periods, forms etc. that should be set out in greater detail in regulations.

### 3. DEFINITIONS

In the definitions clause, the Bill sets out the definition of “public purpose” as “... includes purposes connected to the administration of any law by an organ of state, in terms of which the property concerned will be used by/for the benefit of the public”.

3.1 This definition is not appropriate, as it now includes expropriation for state administrative purposes, and is not limited to redistribution in the interests of the poor and marginalised.

3.2 We submit that there needs to be consultation on a definition that seems to be very widely drafted for the benefit of the state. As currently framed, this provision has the potential to be abused by the state.

### 4. PROPERTY THAT IS NOT LAND

In terms of the Bill, the state may appropriate property that is not land.

Clause 5(10) states that “If the property is not land, the expropriating authority may authorise a suitably qualified person/valuer to ascertain its suitability and value for determining an amount for compensation”.

We are concerned that there are no definitions, or a list of “moveable or intangible property”. This opens the floodgates to a dangerous situation where the state can appropriate any business and/or business assets, shares etc. at its own behest.

## **5. URGENT EXPROPRIATION AND THE POWER TO ACQUIRE A RIGHT TO USE PROPERTY TEMPORARILY**

Clause 20 of the Bill deals with urgent expropriations and the right to use a property temporarily. This clause begs the question as to whether land under this Bill as derived from Section 25 of the Constitution, can give rise to “temporary expropriation” pursuant to Clause 20 of the Bill.

The Oxford English Dictionary defines expropriate as “The taking by the state of private property for public purposes, normally without compensation.”

The question is whether the state can lawfully temporarily expropriate property. The right of ownership is a real right, and this includes an absolute right to possession.

It will be a wasteful use of state resources to expropriate property temporarily for the reasons set out in this clause or to undergo the exercise of expropriation without compensation and the transfer of property only to transfer it back to the owner after 12 months.

The drafters have conflated issues, and this is sure to cause greater confusion.

This issue should form part of the Regulations under the Disaster Management Act No. 57 of 2002 and/or other legislation dealing with natural disasters and other exceptional circumstances.

## **6. MORTGAGES**

There is a lack of detail regarding the issue of mortgages. There could be a situation where the dispossessed person has to pay the bank or other mortgage holder for property that they no longer own.

This will have serious economic effects and requires further consultation with the Minister of Finance, the banks and other stakeholders.

## **7. CONSTITUTIONALITY**

There is a real risk that, due to the uncertainties and issues raised in these submissions, if enacted in its current form, constitutional issues will most likely be raised in the courts. This will only delay the implementation of a just, fair and equitable system, and the marginalized and poor will once again suffer.

## **8. CONCLUSION**

The LSSA is of the view that the Bill requires further consideration by all stakeholders.

The Bill in its current form, by the introduction of “intangible property”, could have the effect of destabilizing the economy and may send the country into a tailspin, given the current economic conditions. South Africa requires an entire system of secure land tenure for all its citizens and to properly redress the inequality and poverty that we are faced with.

This Bill is insufficient and inadequate to address these issues. It does not adequately deal with expropriation without compensation. It gives attention to form, which can be captured in regulations, rather than substance.

The LSSA therefore reserves its right to submit further comments and suggestions to the drafters to cure the mischief and inadequacy of the Bill.