

# FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

*(Incorporating Fish Hoek, Clovelly and Sun Valley)*

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**TO: THE DIRECTOR-GENERAL, DEPARTMENT OF PUBLIC WORKS**  
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**SUBJECT: COMMENTS ON THE DRAFT EXPROPRIATION ACT, 2019**  
**DUE: 19 FEBRUARY 2019 (60 DAYS AFTER 21 DECEMBER 2018)**

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## 1. DISCUSSION

Thank you for this opportunity to comment on the Draft Expropriation Act, 2019. Before doing that, there are two related issues we wish to address. The one issue is the law or lawlessness relationship to land and the other is the current inaccuracy of title deeds.

### **Law / lawlessness relationship to land**

The ownership of land is a highly emotive issue. Investors and developers, domestic and foreign, want rules of law enforced related to property / land rights and security of tenure which guarantees legal protection against forced eviction, harassment and other threats. This includes state protection from land invasion with several current examples in the Western Cape including the burst creeks of Masiphumelele into the wetlands, Khayelitsha almost onto the N2 around Cape Town and Kayamandi around Stellenbosch. Although High Courts have issued eviction orders, the local sheriffs are often under staffed to enforce which really requires the Army to assist.

### **Inaccuracy of title deeds**

We humbly request that before starting with land expropriation, that all land within South Africa's borders is properly identified and the owners determined. There appears to be a 24 million hectare discrepancy (lost land?) that needs to be reconciled as this will have a significant impact on the land debate. From the Land Audit booklet by the Department of Rural Development and Land Reform of 2013 which sets state land (registered and unregistered) at 17,061,822ha or 14% of South Africa. However, the Land Audit Report of 2017, which attempts to show private land ownership by race, gender and nationality, puts private land ownership at 93,956,125ha or 77.03% of the total area of South Africa (121,973,200ha). According to this report, ownership is based on land parcels registered at the deeds office, but "ownership" is not defined. If ownership means freehold in terms of a title deed, then this figure is doubtful.<sup>1</sup> Of the four types of land held by state: directly owned, tribal / traditional land, former homelands with lands expropriated for homelands included that transferred to the South African

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<sup>1</sup> [https://www.businesslive.co.za/bd/opinion/2018-03-12-state-land-in-four-maps-the-24-million-hectare-puzzle/?fbclid=IwAR0ZrmEshddc4V03E7ofJwcl0fsN65y\\_pLTEpz4XKMpz2mwEQVVIXzbid0U](https://www.businesslive.co.za/bd/opinion/2018-03-12-state-land-in-four-maps-the-24-million-hectare-puzzle/?fbclid=IwAR0ZrmEshddc4V03E7ofJwcl0fsN65y_pLTEpz4XKMpz2mwEQVVIXzbid0U)

Development Trust and national parks / nature reserves (protected areas affected by the National Environmental Management Act# 107 of 1998); it is the last category that we would like to see preserved or expanded for everybody.

### **Expropriation Bill, 2019 <sup>2</sup>**

Chapter 1 Definitions and Application of Act, Section 1, (1) “In the public interest” needs to be defined better than just aligning with the “nation’s” commitment to land reform, equitable access to natural resources or redressing past racial discriminatory laws or practices. Although it would seem intuitive, we have seen a recent appeal decision that seems contrary to the normal concept of public interest where 250+ objected to Fish Hoek’s first ever bottle store and only two (late) supported it, yet the (single judge panel) decision went for the supporters against what most would consider to be the very definition of “in the public interest”. This was the 11 December 2018 decision (CMATS 2018-121) in the Western Cape Liquor Board Appeal Tribunal hearing.

Similarly, “public purpose” needs to also be defined better or else it will be challenged in the courts.

#### Chapter 5 Compensation for Expropriation, Determination of compensation, Section 12 (3)

(a) “Where the land is occupied or used by a labour tenant, as defined in the Land Reform (Labour Tenants) Act” #3 of 1996; the intention is the restoration of land lost as a result of racially discriminatory practices such as forced removals. Our concern here with the inclusion of labour tenant is that often the next generation (or three) is not working as labour on the land, but merely occupying space as free accommodation with or after their parents have died. Surely, this expanded use was not originally intended. A labour tenant should directly have a minimum of 20 years of continuous service to the land owner and this definition should be included in Chapter 1 Definitions and Application of Act, Section 1, (1).

(b) “where the land is held for purely speculative purposes;” should be expanded to include “after a period of ten years from date of purchase”. This is in order to give the business owner or entrepreneur sufficient time to find the funds to finance their proposed development undertaking.

(c) “where the land is owned by a state-owned corporation or other state-owned entity;” as stated above, we wouldn’t want to see national parks or nature reserves reduced in size, but rather be expanded for the use of all. However, surely Eskom and Transnet don’t need as much land as they have claimed and they can downsize their headquarters.

(d) “where the owner of the land has abandoned the land;” should include “after suitable efforts have been made to find the owner” although several sections in this bill refer to communicating, our concern is the lack of coordination between reporting entities that have more up-to-date information., such as SARS, municipal accounts departments for rates, banks, investment institutions, etc. Our other point is the definition of abandoned land as hijacked buildings may appear to be abandoned as the owner has been frustrated with the process and cost of eviction.

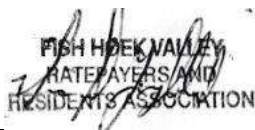
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<sup>2</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201812/42127gon1409s.pdf](https://www.gov.za/sites/default/files/gcis_document/201812/42127gon1409s.pdf)

## 2. RECOMMENDATIONS

Therefore, it is recommended for the reasons stated in this report, that:

- Rules of law, property / land rights and security of tenure are maintained and enforced;
- Land invasions stop due to the passing of this bill;
- That the missing 24 million hectares of land is found and owners ascertained before this bill is promulgated;
- That in Chapter 1 Definitions and Application of Act, Section 1, (1):
  - That “abandoned land” excludes land matters before the courts;
  - That “labour tenant” is defined as a person who personally has a minimum of 20 years continuous service to the land owner;
  - That the definition of “in the public interest” is expanded to include majority view;
  - That the definition of “public purpose” includes “for the public good”;
- That in Chapter 5 Compensation for Expropriation, Determination of compensation, Section 12 (3):
  - That (b) “after a period of ten years from date of purchase” is appended to Chapter 5 Compensation for Expropriation, Determination of compensation, Section 12 (3) (b);
  - That (c) state owned land, other than land owned by the national parks or nature reserves, is reduced; and
  - That “after suitable efforts have been made to find the owner including use of all available information sources” is appended to (d).

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<b>DATE</b>	3 January 2019

**Other references:**

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