

FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

(Incorporating Fish Hoek, Clovelly and Sun Valley)

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Heritage Western Cape: Conservation Body

**TO: The Parliamentary Portfolio Committee on Public Works and Infrastructure
COMMITTEE SECRETARIAT: NOLA JOBODWANA
expropriationbill@parliament.gov.za**

**SUBJECT: COMMENTS ON EXPROPRIATION BILL [B23 – 2020]
DUE: 10 FEBRUARY 2021**

Noted: this bill seeks to repeal The Expropriation Act, 1975 (Act No. 63 of 1975).

There are several references in this bill to reasons for the expropriation needing to be given. This is the crux of the concern expressed by investors who feel that the state may expropriate for mere politically expedient reasons, especially those at nil (without) compensation. The application of the Act states expropriation is acceptable for a public purpose or in the public interest. Clause “2. (1) Despite the provisions of any law to the contrary, an expropriating authority may not expropriate property arbitrarily or for a purpose other than a public purpose or in the public interest.” and 3. (1) ...the Minister [for Public Works and Infrastructure]” may expropriate.

Where “public interest” includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources in order to redress the results of past racial discriminatory laws or practices; and

“public purpose” includes any purposes connected with the administration of the provisions of any law by an organ of state;” are defined in clause 1. (1). “Public interest” and “public purpose” are still too vague and encompassing. We should go beyond thinking of land as a holder of value for arbitrary redistribution to the alternative more productivity of the land in question for the betterment of all society.

Rather than allowing the expropriating authority to set the compensation for expropriation, clauses 7 (7), 12 (1) and (2) need rather to be arbitrated by a third party that understands the value of the property and whether offers and bids are reasonable (just and equitable). Same for for the compensation being fair and equitable. Arbitration will be cheaper for both sides rather than having to institute legal proceedings in a competent court.

Derelict Properties / Absentee Landlords

The City of Cape Town has many delinquent properties with the rates owed being more than the property value. Many of these properties have now been occupied by street people who are also not paying rates. Most owners have probably left the country and some property owners may have died in testate. Clause 7's notice of intention to expropriate may be difficult to serve personally due to the unknown current address of the owner. Therefore, clause 24 (1) (c) will need to be invoked. The expropriated properties should rather be sold by the City's agents (awarded service provider acceptable to any bond holders) in order to obtain the best offer available to recover the lost revenue and outstanding balance.

Unintended Consequences

Cape Town's unfinished flying flyovers were part of an ill-conceived plan by the City Engineers in the 1970s to build a freeway system linking the incoming highways coming into lower downtown with a dual carriageway all the way up to Kloof Nek. To achieve this they would need to buy up all the land between Bree and Buitengracht Streets, which they began to do.¹ This bill would allow the expropriation of Heritage Square, including the oldest producing grape vine in the Southern Hemisphere, planted in 1771, in order for the flyovers to be completed. These flyovers are now used for TV, movie and fashion shoots. Completing these flyovers will not help Cape Town's traffic flow and thus, this Act should not be invoked for this purpose.

For that matter, the M3 could be a limited access freeway from Cape Town to Cape Point. Now, that would improve traffic flow, especially through Newlands and Constantia.

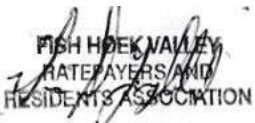
Summary

In conclusion, we are concerned that this bill will diminish individuals' property rights and thus, have a negative effect on the nation's credit rating which for everyone, will increase the cost of borrowing. Capital will leave South Africa rather than and in anticipation of losing properties with nil compensation. Thus, the Rand exchange rate will be negatively impacted.

Specifically, we think that the following needs further clarification:

- “public interest” includes the nation’s commitment to land reform (what is the “nation’s commitment to land reform”?)
- “public interest” [means] reforms to bring about equitable access to all South Africa’s natural resources (what access will satisfy?)
- “public purpose” includes any purposes connected with the administration of the provisions of any law by an organ of state (what purposes and provisions?)

We strongly recommend that a third-party arbitrator who is a qualified property assessor, determines all compensation, including nil compensation, rather than an expropriating authority or the Minister for Public Works and Infrastructure, due to the potential for labelling their decisions as corrupt.

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DATE	12 December 2020

¹ <https://winemag.co.za/travel/david-bristow-cape-towns-unfinished-flyovers-and-how-sas-oldest-vine-was-saved/>