

Expropriation without compensation: Much uncertainty, but context still required

As most South Africans are by now aware, the ANC's elective conference in December resolved to speed up the process of land reform by considering the possibility of amending the Constitution to allow for expropriation without compensation, subject to a 'sustainability test'. Since that announcement, the media and social media has been awash with statements such as 'land grabs' and comparisons to the land seizures that took place in Zimbabwe. Although these comparisons are not unfounded, there are a number of factors which have to be taken into consideration and it is necessary to place the current situation, including all of the variables which are still very unclear, into context.

First and foremost, the announcement was made by a political party and is not official government policy as of yet. For the decision to be implemented, a legal process must be followed whereby an amendment is tabled in Parliament and it must be supported by two-thirds of the members. Although a daunting possibility, the changes cannot happen over-night and an extensive legal process must be followed before it can be implemented.

Secondly, should the Constitution be amended, it may have serious economic consequences but it cannot not allow a free-for-all land grabs situation. The current proposal only speaks to the financial aspects of how the land should be acquired. Even if amended, the Constitution will still not allow a situation where land reform takes place outside of the law. South Africa is based on the rule of law which means that land can only be expropriated if the requirements of the law are met, which means:

- If there is a land claim, the claim must still be proven valid before expropriation can take place;
- An administratively fair procedure must be followed, allowing for public consultation;
- Disputes must be settled through the courts of law; and
- No one may be evicted from their home without a court order, after considering all of the relevant circumstances.

The above are fundamental rights of all South Africans. In truth the financial aspect is of critical importance to both farmers and agribusinesses who have invested in building the agricultural sector, so we in no way want to underplay the importance of that aspect, but our Constitution does not allow for a self-help situation nor would it lend legitimacy to land occupations.



Finally, it is very important not to underestimate the proviso's contained in the announcement. The details are yet to be made public but the announcement went at length to explain that expropriation without compensation must be sustainable and cannot harm the economy, food security or the financial sector. This may seem like a paradox to some, but it could mean that a balanced approach will be followed whereby only selected categories of land are expropriated so as to minimise the effect on the economy. The President of the ruling party's comments over the weekend also alluded to a situation whereby expropriation could be used as one of many different tools to effect transformation. It therefore remains to be seen how expropriation is used in conjunction with tools such as AgriBEE, blended finance models and other methods available to the state. Now more than ever it is important to provide inputs into this debate to arrive at a solution for land reform that is fair and sustainable.

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