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South Africa

# If only land were expropriated in South Africa...

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**South Africans have been bombarded with criticisms of South Africa's Expropriation Act in recent months. It has even become a major talking point on social media platforms. One unforgettable moment was the infamous scene on national television featuring claims of "mass graves and killings" of white farmers, an absurd spectacle promoted by Trump and his allies in the White House. This propaganda video claimed that white farmers were being systematically murdered, feeding the narrative that the Expropriation Act was a tool for reverse racial discrimination, land seizure and genocide.**

Trump's disinformation was used to justify granting special refugee status to white South Africans—an absurd reversal of the historical truth of South Africa's land dispossession. Yet this grotesque piece of theatre has served a purpose. It has shut down serious debate on the real crisis: the state's failure to deliver on land reform—to redistribute land.

Those who claim to be under threat are white landowners and their political allies, such as AfriForum, the DA, and institutions like the Institute of Race Relations (IRR). Yet those are the very people who in fact have continued to benefit materially from a state policy that avoids expropriation at all costs. Under the so-called "willing buyer, willing seller" framework, the government has paid out billions of rands to white landowners to acquire land for redistribution. That has made them the primary beneficiaries of land reform. Meanwhile, the majority of landless and dispossessed communities remain locked out of access to land, with little security of tenure and ongoing threats of eviction.

## **What expropriation?**

Despite the loud conservative outcry, not a single attempt has so far been made to utilise the provisions of the Act. It is portrayed by its opponents as radical and unlawful, yet it is in fact a timid and bureaucratic piece of legislation that offers no meaningful acceleration of land redistribution. It continues to be bound by procedural and legal limitations, and lacks the political will to challenge elite property rights or entrenched inequality.

Whites continue to own the majority of land in South Africa. In the past five years, very little land has been redistributed, and one of the central reasons has been the chronic underfunding of land reform. Budget allocations have steadily decreased. In 2023/24, the Department of Agriculture, Land Reform and Rural Development (DALRRD) was allocated R17.2 billion; in 2024/25, this dropped to R16.7 billion—a R546 million decrease. Shockingly this means only 1.4% of the national budget is allocated to land reform. This paltry allocation is wholly inadequate to address the legacy of apartheid, provide tenure security, restore land to dispossessed communities, or support emerging farmers.

## **What the Act actually says—and what it doesn't**

To understand why the Expropriation Act is such a weak tool for redress, it is necessary to look closely at its provisions.

On paper, the Act sets out the legal framework under which the state can expropriate property—including land—for a public purpose or in the public interest (Section 2). However, the public interest is interpreted in a limited way, and the process is so stacked with procedural hurdles that it will delay or prevent decisive action.

The issue that the DA has now gone to court over is the provision for nil compensation. Section 12(3) outlines conditions under which nil compensation may be paid. These include situations where:

- Land is not being used, and the owner has no intention of developing it;
- Land is held purely for speculative purposes;
- Land was abandoned;
- State-owned land is occupied unlawfully.

These clauses are narrow and vague. In practice, they will apply to very few cases. Most commercial farmland, including productive land acquired during colonialism and apartheid, is explicitly excluded from these categories. There is no provision that allows for expropriation without compensation of land that was unjustly acquired or inherited through racial privilege. Nor does the Act allow for large-scale land redistribution through expropriation, either in rural or urban settings.

Sections 7 to 10 lay out a rigid and legalistic process: the state must conduct investigations, issue notices of intention, invite objections, conduct valuations, and provide time-consuming justifications. All of this gives current landowners—particularly wealthy ones with legal representation—plenty of opportunity to challenge and delay any action. Expropriation, under these terms, is an administrative and legal nightmare, not a tool for transformation and social justice.

Even worse, Section 14 allows disputes over compensation to be referred to the courts. This further privileges those who can afford to litigate and will bog down redistribution in endless legal wrangling. In a context where the judiciary often leans toward property rights over redistributive justice, this effectively disarms the state's ability to act boldly.

Most importantly, the Act does not compel the state to expropriate for purposes of land reform. It merely enables expropriation under tightly controlled conditions. There is no obligation, no deadlines, no prioritisation of the landless, no mandate to redistribute land to communities dispossessed under colonialism and apartheid.

## A weak and limited law

Far from being a threat to landowners, the Expropriation Act is severely limited. It offers no real safeguards or instruments for genuine redress to landless rural or urban communities. It fails to address the urgent need for secure tenure in informal settlements. And it fails to prioritise the redistribution of productive farmland.

Civil society actors such as SERI have called attention to the Act's limitations. They argue that expropriation should be used to provide land security to those living in informal areas, and to unlock land for redistribution and public development. This is in line with the constitutional vision (outlined in sections 25(5)–(9)), which places a clear obligation on the state to redress the results of past racial dispossession through legislative and other measures.

Legal scholars like Professor Pierre De Vos remind us that the Constitution supports expropriation in the public interest, including for land reform. Section 25(8) explicitly states that nothing in the property clause may prevent the state from pursuing land reform to remedy historical injustices. And yet, this legal empowerment has not been

matched by political commitment.

The view of the property-owning class is on display with lawyers Mabasa and Karberg from Werksmans Attorneys. They, of course, interpret the Act narrowly, suggesting it will apply only in cases where land is abandoned or not in use. Not surprisingly, not a transformative interpretation. In this reading, expropriation becomes a minor administrative tool rather than a bold mechanism to reverse centuries of dispossession.

Advocate Tembeka Ngcukaitobi, on the other hand, has rightly pointed out that the Act must be read as applicable to all land, including land under traditional authorities. To ignore rural areas and communal land is to ignore the historical heart of South Africa's land question—where colonial conquest first violently dispossessed African people.

These two interpretations show the issues that will be the subject of the Section 14 right to litigate.

## The real issue: political will

Ultimately, the Expropriation Act is only as effective as the political will to implement it. And in South Africa, that will is sorely lacking. For all the constitutional possibilities, the state has chosen to tread carefully, to compensate landowners generously, and to avoid confrontation with powerful agricultural and property interests. Instead of facilitating the redistribution of land, it has largely protected existing land ownership patterns.

Since the end of apartheid, very few cases have occurred where land has been expropriated for redistribution purposes. The state has continued to pay millions to buy land from white landowners. This means that the very people who benefited from apartheid's theft of land are now being paid again in the name of justice. Meanwhile, the landless majority wait for empty promises to be fulfilled.

## Reclaiming the land question

In relation to the urgent need for land and agrarian reform, not just in terms of reparations but to resolve hunger and rural livelihoods, the Expropriation Act will be largely irrelevant. The debate around it represents a storm in an ideological teacup. The Expropriation Act should not be treated as a sacred text nor as a dangerous weapon. It must be engaged with critically. Progressive civil society, trade unions, rural communities, and urban social movements must focus on the real issue: the struggle for land reform and redistribution, rooted in the historical reality of dispossession, which the state has had the legal power, even duty, to implement since the passing of the Constitution.

Land is not just a commodity. It is the basis of dignity, livelihood, and justice. Until the state uses its constitutional powers to take meaningful action, the land question will remain unresolved, and the dream of redress will remain deferred.

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