

# Agri SA

## Media Release

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### Agri SA reacts to approval by select Committee of Expropriation Bill

The Select Committee on Economic- and Business Development approved the Expropriation Bill on 10 May. The Select Committee made only two changes to the Bill and these were semantic in nature. The definition of “expropriation”, which Agri SA lobbied hard to have removed or amended, is still in the Bill. The definition limits compensable takings of property to instances where the state has acquired the property. The Constitution contains no such limitation, said Ernest Pringle, chairperson of the Agri SA Agricultural Development Committee.

“The provincial hearings on the Bill were called at short notice and little opportunity was generally afforded for public participation and inputs. Despite the fact that Agri SA provincial representatives in all the provinces raised concerns about the definition of expropriation, these concerns are not contained in the provincial reports on the hearings that served before the Select committee”, he added.

Agri SA has sought a number of legal opinions on the interpretation of the Constitutional Court judgement in the Agri SA versus Minister of Minerals and Energy case, which held that the taking of old order mineral rights by the state as custodian of the minerals, did not amount to expropriation and was thus not compensable. The latest opinion by senior counsel on the judgement and the issue of custodianship was received on the 4<sup>th</sup> of May, Pringle said. Counsel was requested, amongst other things to give an opinion on the risk of productive agricultural land being taken without compensation under the guise of custodianship through the provisions of the Protection and Development of Agricultural Land Framework Bill (PDALFA). Counsel advised that the notion of state custodianship must be read within the context of objectives of the specific Bill. Whilst the Mineral and Petroleum Resources Development Act (MPRDA) sought to abolish private ownership of minerals, PDALFA does not seek to abolish private ownership of agricultural land. PDALFA is based on the premise that private ownership of agricultural land will continue, it does not envisage the abolition of private ownership of agricultural land, or the seizing of agricultural land from private land owners without compensation. There is international precedent for custodianship over minerals; the same does not apply to land. There are good arguments to be put forward that land and movable property is strongly hedged, not only in our Constitution, but internationally in constitutions containing bills of rights.

The court also found in the Agri SA case, that there can be no expropriation in circumstances where deprivation does not result in property being acquired by the state. Only where the State acquires property for itself, is it considered an expropriation. The definition in the Expropriation Bill seems to be in line with that. This is worrying. However, the Expropriation Bill itself contains no new powers of expropriation, any attempt to take agricultural land without compensation will have to come through the Minister of Agriculture, Forestry and Fisheries or land generally through the Minister of Rural Development and Land Reform. Agri SA will certainly fight any such attempt in the courts. The implementation of the Expropriation bill, once it becomes law, will also be carefully scrutinised by Agri SA.

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