

# Agri SA

## Mediaverklaring / Media Release

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### **Perspektief nodig vir die Onteieningswetsontwerp soos ingedien by die Nasionale Vergadering**

### **Perspective required as Expropriation Bill is introduced to the National Assembly**

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### **Perspektief nodig vir die Onteieningswetsontwerp soos ingedien by die Nasionale Vergadering**

Na maande se gesprekke binne die Portefeuljekomitee op Openbare Werke is die Onteieningswetsontwerp uiteindelik by die Nasionale Vergadering ingedien. Sedert die wetsontwerp die eerste keer vir kommentaar gepubliseer is, was dit baie omstrede, en die jongste wysigings wat deur die Portefeuljekomitee voorgestel was, is geen uitsondering nie. Dit is in die konteks wat Mnr Johannes Möller, President van Agri SA, die landbousektor aanraai om nie deur sensasionele uitlatings beïnvloed te word nie en perspektief te behou oor die kwessie.

“Onteiening, veral binne die konteks van grondhervorming, is ’n sensitiewe saak en word dikwels verwar met ontneming sonder vergoeding. Terwyl Agri SA steeds van mening is dat daar minder ingrypende maniere bestaan om grondhervorming te bevorder, word erken dat die staat ’n bestaande reg het om te onteien vir legitieme, gemeenskapsdoelwitte. Die reg word direk aan die Grondwet ontleen en word reeds deur verskeie wetgewing gereguleer.”

In die verband, glo Möller, dat die wetsontwerp slegs op eie meriete beoordeel moet word; “Die wetsontwerp reguleer slegs die proses wat gevolg moet word sowel as die berekening van vergoeding. Die werklike bemagtiging om te onteien bestaan reeds in verskeie ander wette. Dit is dus onvanpas om die breër debat oor onteiening binne die konteks van die wetsontwerp te voer. Onteiening vind reeds vir dekades lank al plaas in Suid-Afrika.”

Die jongste wysigings deur die Portefeuljekomitee word egter met gemengde reaksies ontvang, soos Möller verduidelik: “Ons is bekommerd oor die voorgestelde definisie van ‘onteiening’ aangesien dit die trefwydte van die begrip beperk tot die gevalle waar die staat self die eiendom verkry. Dit is belangrik, aangesien die grondwetlike verpligting om vergoeding te betaal slegs van toepassing is waar staatsoptrede as ’n onteiening geag word. Na ons mening kan daar gevalle wees waar die staat se aksies die eienaar se reg om die eiendom te gebruik tot so ’n mate beperk dat dit gelykstaande aan ’n *de facto* onteiening is. As die houe in so ’n geval dit wel as ’n onteiening ag binne die konteks van die Grondwet, kan die voorgestelde definisie in die spervuur beland.” Derhalwe, glo Agri SA dat die definisie in geheel verwyder moet word om enige moontlike grondwetlike litigasie te vermy.

Nietemin, glo Agri SA wel dat daar heelwat positiewe wysigings in die hersiene wetsontwerp gemaak is: “na die wysigings, kan die trauma wat deur die onteiening veroorsaak is wel in ag geneem word in die berekening van vergoeding, mits daar goeie redes is om dit in ag te neem. Die onteieningsowerheid word ook nie meer toegelaat om 20% van die kompensasie terug te hou indien daar ’n geskil oor vergoeding bestaan nie. Verder sal die eienaar nie meer ‘geag’ word as of hy die vergoeding wat aangebied word, aanvaar het indien hy nie ’n hof binne 60 dae nader nie. Die wysigings laat ook die partye toe om dispute vir mediasie te verwys indien hulle nie ooreen kan stem oor vergoeding nie. As die mediasie nie suksesvol is nie, dan is die verpligting op die staat om die houe te benader. Laastens stel die wetsontwerp dit nou baie duidelik dat die houe genader kan word indien daar enige geskil bestaan in verband met die toepassing van die wet.”

“Die Wetsontwerp is nog nie gefinaliseer nie en sal ook na die relevante Gekose Komitee binne die Nasionale Raad van Provinsies moet gaan” sê Möller. “Agri SA sal aanhou om te beding vir ’n wetsontwerp wat regverdig is en nie eiendomsreg of investering in Suid-Afrika bedreig nie” het hy bygevoeg.

Uitgereik deur Agri SA, Direktooraat: Korporatiewe Skakeling

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**Perspective required as Expropriation Bill is introduced to the National Assembly**

After several months of deliberation in the Portfolio Committee on Public Works, the Expropriation Bill has finally been submitted to the National Assembly for consideration. The Bill has been shrouded in controversy since it was first released for comment and the latest amendments made by the Portfolio Committee have been no exception. It is within this context that Mr Johannes Möller, President of Agri SA, urges the agricultural sector to keep perspective and not to be swayed by sensationalist statements regarding the Bill.

“Expropriation, especially within the context of land reform, is a sensitive matter and is often confused with confiscation without compensation. Whilst Agri SA maintains that there are less invasive means to affect land reform, we also acknowledge that the state has an existing right to expropriate property to effect legitimate public aims. This right comes directly from the Constitution and is regulated by a number of different laws.”

It is in this light that Möller believes the Bill should be treated on its own merits; “The Bill in question will simply regulate the procedure that must be followed as well as the manner in which compensation must be calculated. The actual power to expropriate already exists within different legislation. The broader debate on expropriation therefore does not only hinge on this Bill. Expropriations have been taking place in this country for decades.”

The actual amendments made by the Portfolio Committee have been met with mixed reactions, as Möller explains: “We are concerned about the proposed definition of the term “expropriation” as it seems to limit the scope of what is regarded as an expropriation to those instances where the state acquires the property itself. Only when a government action is deemed an expropriation is the government obliged to pay compensation in terms of the Constitution. There may be instances where state actions deprive the owner of the use of the property to such an extent where it could amount to a *de facto* expropriation. If a court regards this action as tantamount to an expropriation within the context of the Constitution, the definition may be found wanting.” Agri SA therefore believes that the definition should be left out altogether to avoid any possible constitutional challenges.

This being said, Agri SA also believes there are positive amendments in the revised Bill: “In calculating compensation, the trauma caused by the property being taken without consent can now be factored in if there are good reasons to do so. The expropriating authority will no longer be permitted to hold back 20% of the compensation in the case of a dispute and the owner will no longer be ‘deemed’ to accept the state’s offer of compensation if he or she does not approach a court within 60 days. After the amendments the parties can either go for mediation or the state must approach the court if they can’t settle on the amount of compensation. Lastly, the Bill now states very clearly that there will be recourse to the courts in the event of any dispute on any matter relating to the application of the Bill.”

“The Bill has not yet been finalised and will go to the relevant Select Committee within the National Council of Provinces now”, said Moller. Agri SA will continue to lobby for a Bill that is fair and does not pose dangers to property rights and investment in property in South Africa,” he added.

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