

The Role of the SAHRC

The South African Human Rights Commission (SAHRC) is an independent body set up by the Constitution to monitor, protect and promote the attainment of human rights in our country.

The SAHRC acknowledges the vital importance of property rights, including the rights of individuals to own houses, land, and other assets, as a means of promoting development, and improving socio-economic conditions. Since the beginning of democracy, black South African ownership of houses, land, and other assets has grown. However, this growth and progress will be in danger of being overturned if the Expropriation Bill B4-2015 is passed in its current form. People with traditional land use rights in former homeland areas in peri-urban spaces, as well as farmers who own their farming land, could see their assets and land being expropriated by the government for the purposes of RDP housing and other uses and developments. In these situations, affected people will be left without adequate compensation and with no effective redress for the loss of their property.

The SAHRC is concerned that if the Bill is passed, more and more land will become vested in the government; this will disempower people by making them more dependent on the government, and is likely to create economic challenges, by further entrenching poverty and inequality.

The Bill goes against the Constitution on the basis that it empowers the State to take property and makes it the responsibility of those whose land has been expropriated to contest the compensation payable in the courts thereafter. The SAHRC is also worried that the right of access to justice is also adversely impacted by the Bill.

This pamphlet, prepared by the Legal Resources Centre, has been put together to draw attention to issues and concerns related to the Bill in its current form, and to provide information on these key concerns and challenges to interested and affected people in anticipation of public consultations.

The aim of the SAHRC is to transform society, secure rights and restore dignity!

CONTACT US

Website: www.sahrc.org.za
E-mail: info@sahrc.org.za

Head Office

Forum 3, Braampark Office Park, Braamfontein, JOHANNESBURG

☎ (011) 877 3600 Fax: (011) 403 0684

Eastern Cape

4th Floor, Oxford House, 86–88 Oxford Street, EAST LONDON

☎ (043) 722 7828/5/8 • Fax: (043) 722 7830

Free State

18 Keller Street, BLOEMFONTEIN

☎ (051) 447 1133 • Fax: (051) 447 1128

Gauteng

2nd Floor, Forum 3, Braampark Office Park, 33 Hoofd Street, Braamfontein, JOHANNESBURG

☎ (011) 877 3750 • Fax: (011) 403 0668

KwaZulu-Natal

First Floor, 136 Margaret Mncadi Avenue, DURBAN

☎ (031) 304 7323/4/5 • Fax: (031) 304 7323

Limpopo

1st Floor, Office 102, Library Garden Square, Corner of Schoeman and Grobler Streets, POLOKWANE

☎ (015) 291 3500 • Fax: (015) 291 3505

Mpumalanga

4th Floor Carltext Building, 32 Bell Street, NELSPRUIT

☎ (013) 752 8292 • Fax: (013) 752 6890

Northern Cape

45 Mark and Scott Road, Ancorley Building, UPINGTON

☎ (054) 332 3993/4 • Fax: (054) 332 7750

North West

25 Heystek Street, RUSTENBURG

☎ Tel: (014) 592 0694 • Fax: (014) 594 1089

Western Cape

7th Floor, ABSA Building, 132 Adderley Street, CAPE TOWN

☎ (021) 426 2277 • Fax: (021) 426 2875

ENGLISH



WHAT IS THE EXPROPRIATION BILL B4-2015?

A Guide to the Expropriation Bill prepared by the Legal Resources Centre



Image courtesy of dailydesigninspiration.com

Transforming society

Securing rights

Restoring dignity

What is the Expropriation Bill B4-2015?

- The reason for the Expropriation Bill (EB) is to provide a way for the government to purchase property needed for the public purpose or in the public interest and provide guidelines on how to properly do so.
- “Property” is not limited only to land, and “public purpose or interest” includes land reform and restitution programmes and projects like mining and infrastructure development such as building dams, roads, and developing townships.
- The Expropriating Authority (EA) can be a national minister, a provincial minister or a municipality.
- It is very necessary to have an expropriation act that complies with the Bill of Rights and the Constitution because land reform and housing for poor people must not be delayed by slow and ineffective expropriation procedures; BUT expropriation must not harm communities whose land rights on communal land are not properly recognized and recorded.

Expropriation Bill: Issues

- The main problems with the EB include:
 1. Communal land does not get the special treatment that it deserves, as communal land is a special category that requires recognition of fundamental individual and family rights under customary law.
 2. Land reform processes, which already require investigation of rights and notice of expropriation are not taken into account, and the duplication of processes will result in further delays. Wealthy land owners whose properties are to be redistributed under land reform acts should not be allowed to restart the expropriation process from the beginning under the EB.
 3. Compensation for the expropriated land is not based solely on the property value of the land. This means that the EA can pay less for the value of the land by using other criteria like the “current use of the property” or “the history of acquisition and use of the property”. This may endanger communal land because the EA may not understand the nature of the current use of the communal land. However, it may support speedy land reform because it may mean that current owners who received state subsidies can be expropriated at less than market value.
 4. Under the EB, the Minister’s powers to expropriate land for mining purposes are not limited and this is troublesome because communities on communal land are not protected under the current EB.

5. Under the current EB, there is no provision for alternative land or accommodation to be provided to the owner by the EA. This will mean that some people that sell their lands may not find equally good land to buy in the area that they like.
6. Currently, the Minister or Expropriating Authority (EA) conducts an investigation on the suitability of the property and the value of the property and consults with the Municipality Manager as part of the investigation. At least, there should be an independent investigator that does a thorough land rights inquiry and an independent valuer that determines the value of the property, including the full social value of community land and the availability and suitability of alternative land so that community members can sustain their livelihoods.
7. The Mineral and Petroleum Resources Development Act (MPRDA) empowers the Minister to expropriate land for mining and the current EB does not require the mining companies or the state to meaningfully negotiate with the communities about communal land. Communities do not have the right to refuse to allow mining on their land and are routinely displaced from their residential and agricultural land by mining activities, leading to harsh consequences such as the destruction of customary ways of life, disruption of socio-economic linkages within the communities, and an unjust impact on women, the main users of agricultural land that the community is deprived of.



Image courtesy of kpmgafrika.com

8. If the EA and the owner disagree on compensation, the issue can be taken to the High Court. However, the owner likely has to pay their own legal costs.
9. The EA also gets to pick the date of expropriation and

the day that they will take possession of the property. This does not give the disadvantaged enough security in the process.

- To read the Expropriation Bill, visit: <http://www.parliament.gov.za>
- **To read submission to the Portfolio Committee,** visit: <http://www.lrc.org.za>
- **Other Important Bills and Acts to read:**

Restitution of Land Rights Amendment Act 15 of 2014: <http://www.gov.za>

Submission on Restitution of Land Rights Amendment Bill: <http://www.lrc.org.za>

Property Valuation Act: <http://www.gov.za>

Mineral and Petroleum Resources Development Amendment Bill: <http://www.saflii.org.za>

Submission on the MPRDAB: <http://www.lrc.org.za>

Demand that public hearings be held in your province where you can participate and be heard about your community’s mining and land reform challenges.

For further information contact the Committee Secretary [PO Box 15, Cape Town, 8000] or email at abusakwe@parliament.gov or call Ms Akhona Busakwe on tell (021) 403 3859 or cell 083 709 8390.

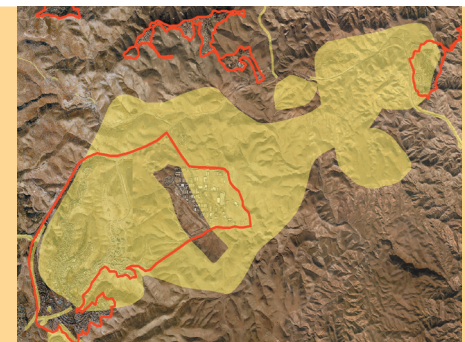


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