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GAIN Report

Global Agricultural Information Network

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POLICY

Voluntary Public

Date: 3/2/2018

GAIN Report Number:

South Africa - Republic of

Post: Pretoria

South Africa Considering Expropriating Land Without Compensation

Report Categories:

Agricultural Situation

Agriculture in the Economy

Agriculture in the News

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Report Highlights:

On February 26, 2018 the South African Parliament passed a motion to begin a process of considering to amend Section 25 of the Constitution to allow for the expropriation of land without compensation. While the final outcome of this process is uncertain at this stage, there are concerns that the expropriation of land without compensation would impact the South African agriculture sector and investments into the economy.

Background

On February 26, 2018 the South African Parliament passed a motion to begin a process to amend Section 25 of the Constitution to allow for the expropriation of land without compensation. As a result, the Constitutional Review Committee has been mandated to undertake a process of consultation to determine whether to amend Section 25 of the Constitution and how it will be done. The Constitutional Review Committee is expected to report back to Parliament by August 31, 2018. The Constitutional Review Committee is expected to have hearings where members of the public, civil society and any other parties can present their proposals.

Below is an extract of Section 25 of the Constitution that will be under consideration by the Constitutional Review Committee:

- “25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application—
- (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—
- (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section—
- (a) the public interest includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).”

According to Parliament, the objective and intention of expropriating land without compensation is to redress the injustices of the past apartheid government which passed several Acts between 1894 and the 1950s to strictly limit ownership of land by black Africans and forcefully remove them from prime land to communal land. As result, only about 7% of arable land was reserved for predominantly black South Africans and 93% of the more fertile/ prime land was reserved for white South Africans. This is argued to have had major socio-economic repercussions for black people in South Africa in terms of poverty, current low level of ownership of titled land and their limited participation in economic opportunities. Due to the above reasons, the land issue is very complex because, while it is a highly political, racial and emotional issue, it could pose serious ramifications to the economy.

Implications

Based on media reports, the expropriation of land without compensation has received widespread coverage and mostly negative criticism. This is despite assurances by the ruling party, the African National Congress (ANC) that expropriation of land without compensation would be subject to a feasibility study to ensure that food security and the economy were not threatened, and that the agricultural sector is not destabilized. Below are some of the media reports on the issue;

- [AfriForum to warn the world over threat to SA property rights](#)
- [Seven questions about expropriating land without compensation](#)
- [Vote in South Africa's parliament moves land reform closer](#)
- [Researchers plot 4 outcomes for land expropriation without compensation](#)

To date, the political parties in favor of amending the constitution to allow for the expropriation of land without compensation possess more than the two thirds majority that is required at Parliament to amend the constitution. Therefore, should the Constitutional Review Committee recommend the expropriation of land without compensation, there is a high possibility that this would be passed by Parliament. However, South Africa will be having national elections in 2019, and because the land issue is political and sensitive to the economy, it is uncertain at this stage what the final outcome of the proposed expropriation of land without compensation would be. In addition, some media reports have indicated that there are high chances of the land issue being referred to the constitutional court should Parliament amend the constitution to allow for the expropriation of land without compensation.

From an agricultural perspective, concerns have been raised that expropriating land without compensation would violate widely accepted property rights principles and would result in reduced investments into the sector and decrease in agricultural production. In addition, there is uncertainty as to the impact of expropriating land without compensation to the banking sector believed to have advanced at least R160 Billion (US\$13 Billion) in debt or secured loans to the agriculture sector based on land titles as collateral.

Post will continue to monitor the progress on the matter, specifically that the public hearings and the process followed by the Constitutional Review Committee will be fair, transparent and objective. If handled effectively and objectively, this process could bring to conclusion the complex land issue which has resulted in a lot of uncertainty in the agricultural sector for a very long time.

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