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LAND REFORM

Government gets tough

By Thebe Mabanga

The department of public works appears willing to use intellectual muscle and legal debate, rather than just a parliamentary majority, to push through contentious legislation.

Public works minister Geoff Doidge confirmed recently that the department was preparing to reintroduce its expropriation bill, with "significant amendments... It will be treated like a new bill. "

Geoff Doidge - Expropriation bill will be treated as new

Doidge's spokes man, Koketso Sachane, told the *FM* that the department will this week meet the office of the state legal adviser to address the constitutionality concerns that sank the bill last year.

Annelize Crosby, policy and legal adviser at AgriSA, says the most contentious aspect is that the bill allows the minister to determine the final price of expropriated land without recourse of appeal to a court in the event of a disagreement.

The bill seeks to update the Expropriation Act of 1975 by bringing it in line with the constitution. This is by broadening the criteria for determining compensation, from using only market value to include the history and use of the property, and state subsidies in acquiring and maintaining the property.

The updated bill also includes public interest, rather than just public purpose, as grounds for expropriation. (Public interest includes land restitution and community development, while public purpose would include the building of a dam or a road.)

The bill was passionately introduced in parliament by former public works minister Thoko Didiza in March last year, then withdrawn in the heady days around the recall of former president Thabo Mbeki and Didiza's accompanying resignation in September.

In a move that undermined both Didiza and Thandi Tobias, the then public works portfolio committee chairman and now deputy minister of trade & industry, the withdrawal was announced by ANC secretary-

general Gwede Mantashe. This was a strong signal that the ANC leadership elected in Polokwane could not wait to start exercising power.

Since the principle of public interest is derived directly from the constitution, it is hard to see how critics will successfully argue against it. Crosby points out that the principle is vague and would need to be tightly defined. Crosby also has misgivings about the bill's provision that third parties be allowed to approach the state to expropriate, as that opens the way for an unscrupulous developer to cheat a community out of its land through questionable means. Under the 1975 act, only the state and parastatals can expropriate land.

Also in line with the constitution, the bill notes that property is not only land, but can include movable assets and shares. This led Absa's then-CEO Steve Booyesen, batting for the farming constituency, in which Absa is a significant lender, to tell parliament that the bill "can be used to expropriate anything for any reason at any price without an option to appeal".

Another question government will face is how the bill, in whatever form it is brought back, will actually help advance land reform.

Democratic Alliance MP Annette Steyn says reintroducing the bill is like "using a sledgehammer to crack a nut". She says the failures of land reform are due to inadequate resources, not white farmers' intransigence.

Government has already admitted that the country is unlikely to achieve the goal of transferring 30% of land to black owners by 2014, with only about 5% having been transferred. The land affairs department estimates that to achieve the target of 30% at current prices will require R75bn over the next five years.

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