

Property Valuation Practices & Assumptions in South Africa:

Navigating Legislative and
Judicial Valuation
Requirements in the Context of
Expropriation for Land Reform

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RETHINKING EXPROPRIATION LAW VII

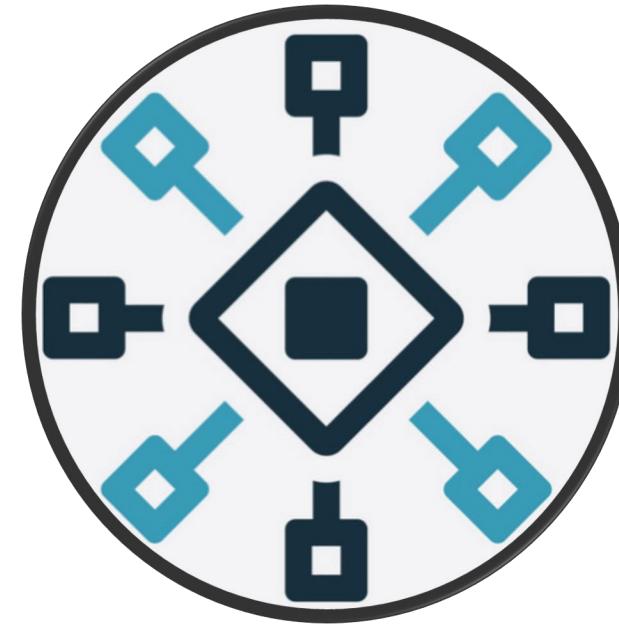
Previously on

Rethinking **Expropriation Law**

South African Edition



- Constitutional framework
- Evolution of South African expropriation legislation
- Compensation: Other relevant legislation
- Contradictions and consternation



Constitutional Framework

Expropriation Purpose

- For a public purpose or in the public interest
- Expanded the state's powers: include land reform

Compensation Standard: Justice & Equity

- Equitable balance between the public interest vs interests of expropriatee
- Consider all relevant circumstances, including:
 - Current use of the property
 - History of acquisition and use of the property
 - Market value
 - State investment/subsidy to acquire property or make beneficial capital improvements
 - Purpose of the expropriation

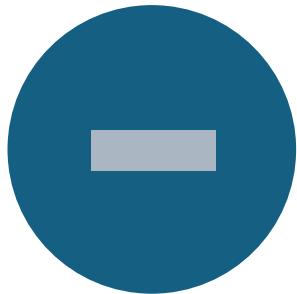
No Guidance on Compensation Calculation



In 2000, Land Claims Court formulated two-step approach to calculate compensation



In 2006, reluctantly accepted by the Constitutional Court

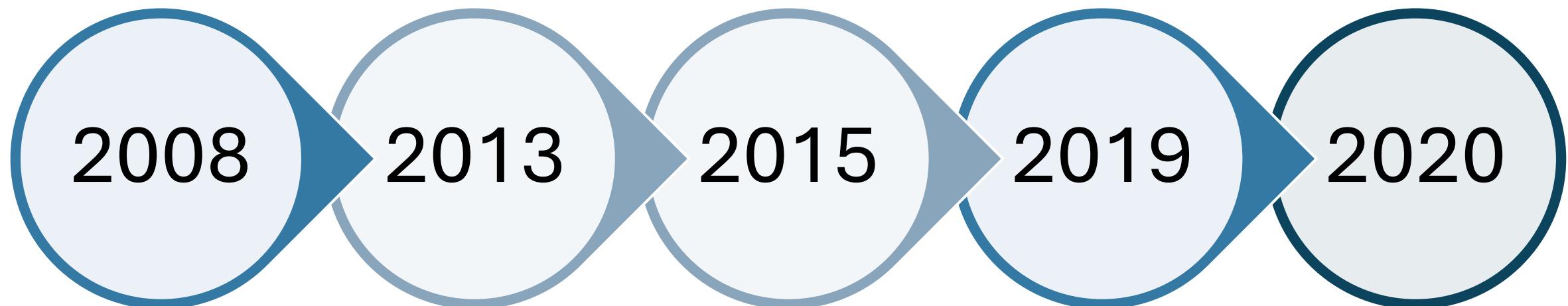




Expropriation Act of 1975

- Pre-constitutional
- Mainly uses market-value standard for compensation
- Apply alongside Constitution's standard of justice & equity
- New legislation required

Expropriation Bills





Expropriation Act of 2024

Operation

- Published in January 2025; not yet in operation
- Will replace 1975 Expropriation Act
- Expropriation procedure & compensation payment

Mirrors Constitution

- Similar compensation provisions
- Provides for nil compensation in land reform context
 - Unused land; not developed / income-generating
 - State land not used for core functions
 - Abandoned land
 - Market value \leq state investment / subsidy

Compensation Calculation

- No further guidance
- Compensation vs Value

Property Valuation Act of 2014



Objects

- Facilitate land reform through regulation of valuation of property identified for land reform
- Provide voluntary valuation service to departments for non-land reform cases

Application

- Property identified for land reform must be valued by Office of the Valuer-General to determine the “value”
- Def of “value” mirrors Constitution’s compensation provisions:
 - Must reflect equitable balance between public interest and interests of those affected
 - Consider all relevant circumstances, including 5 examples listed in the Constitution

Property Valuation Regulations, 2018

Determining Value

Regulations provide formula to determine value:

$$\frac{\text{market value} + \text{current use value}}{2} - (\text{acquisition benefits} + \text{state investment} + \text{subsidies})$$

Questions

- How do we reconcile the concepts of value & compensation?
- How do we take account of other “relevant circumstances” when using this formula?

Case Law: Value vs Compensation

Uys v Msiza 2018 (SCA)

- Court's argument: relevant factors, along with market value, already subsumed in determination of value
- Criticism: court conflating value & compensation

Emakhasaneni Community v Minister of RDLR 2019 (LCC)

- Minister contended could not deviate from value of OVG
- Cannot base compensation on court order, rather values determined by OVG
- Court: Nothing in PVA that OVG determines compensation / Minister bound by OVG's decision
- OVG's value only guides Minister when negotiating just & equitable compensation

Contextual vs Quantitative Approach to Determining Compensation

Moloto Community v Minister of RDLR 2022 (LCC)

Contextual Approach

- Serves the Constitutional purposes of determining just & equitable compensation
- Context always matters when considering “relevant circumstances”
- Current use of a property may be integrally linked with environmental, social or cultural values – with little to no relation to financial value

Quantitative Approach

- Above reasons do not preclude quantification of financial value
- Quantification may be of great assistance to determine just & equitable amount

- Mirrors provisions of the Constitution
- Just & equitable compensation
- Consider all relevant circumstances
- Potential for nil compensation with land-reform expropriations

Expropriation Act, 2024



- Mirrors provisions of the Constitution
- Equitable balancing of interests
- Consider all relevant circumstances
- Provides formula to determine value in land reform cases

Property Valuation Act & Regulations





- In the future, are all negotiations about land reform compensation invariably heading to the courts?
- If the state relies on the formulaic “value” determined by the OVG, and the courts must provide and apply context, it will be near impossible for the parties to reach agreement on “just & equitable compensation” without court intervention