THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE (CLUSTERS ONLY):

This is to confirm that:

1. The Presidency has assessed the Socio-Economic Impact Assessment (SEIAS) Report as per the following:

    * Initiating Department : Public Works and Infrastructure
    * Name : Expropriation Bill
    * Type of Assessment : Final Impact Assessment

2. A Final Sign Off Form will be issued once Clusters' Recommendations are addressed and Cabinet Submission is finalised.

3. Verified and signed off by SEIAS Unit:

    Official Stamp and Date

planning, monitoring and evaluation
Department:
Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA
SEIAS
Socio-Economic Impact Assessment System
No: 0076
AUTHENTIC AND OFFICIAL
STAMP OF APPROVAL
CLUSTER ONLY
Date: 24/10/2019

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE SIGN- OFF FORM

This is to confirm that:

1. The Presidency has assessed the Socio-Economic Impact Assessment (SEIAS) Report as per the following:

   * Initiating Department : Public Works and Infrastructure
   * Name : Expropriation Bill
   * Type of Assessment : Final Impact Assessment

2. The initiating department has been given feedback and incorporated all inputs as contained in the Final Socio-Economic Impact Assessment report.

3. Permission is granted to the Department to proceed with submission of the Expropriation Bill and the SEIAS Final Impact Assessment report to Cabinet.

4. Verified and signed off by SEIAS Unit:

   Official Stamp and Date

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE SIGN- OFF FORM (CABINET)

This is to confirm that:

1. The Presidency has assessed the Socio-Economic Impact Assessment (SEIAS) Report as per the following:

    * Initiating Department : Public Works and Infrastructure
    * Name : Expropriation Bill
    * Type of Assessment : Final Impact Assessment

2. The initiating department has been given feedback and incorporated all inputs as contained in the Final Socio-Economic Impact Assessment report.

3. Permission is granted to the Department of Public Works and Infrastructure to proceed with the submission of the Expropriation Bill and the SEIAS Final Impact Assessment report to Cabinet.

4. Verified and signed off by SEIAS Unit:

    Official Stamp and Date

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
POLICY AND RESEARCH SERVICES
SEIAS
Socio-Economic Impact Assessment System
No: 172
AUTHENTIC AND OFFICIAL
STAMP OF APPROVAL
FINAL
Date: **2020/05/29**

THE PRESIDENCY

REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

REVISED (2019): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2

NAME OF THE PROPOSAL: EXPROPRIATION BILL [B-2019]

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the DMPE on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.

PART ONE: ANALYSIS FOR FINAL SEIAS REPORT

Please keep your answers as short as possible. Do not copy directly from any other document.

1. Conceptual Framework, Problem Statement, Aims and Theory of Change

1.1. What socio-economic problem does the proposal aim to resolve?

The proposed legislative reform measure is intended to empower the State to effectively remove the hitherto institutionalised socio-economic barriers to access property and natural resources. The removal of the socio-economic barriers alluded to above requires a special measure such as the Expropriation Bill, 2019 to grant the state extraordinary authority to compulsorily take immovable property from persons and corporations for use in the public interest.

The public interest in the main refers to land and water reforms, the creation of a sustainable environment and sustainable human settlements. The proposed legislative reform will furthermore enable South Africans to access property and natural resources on an equitable and fair footing.

Section 25(8) of the Constitution, 1996 permits the state to enact legislation that would facilitate the achievement of land, water and related reform in order to redress the results of past racial discrimination.

The Department's mandate to review the Expropriation Act 63 of 1975 is derived from a Cabinet approval of 15 September 2004. This was the beginning of a process to address the identified socio-economic problem.

The Draft Policy on the Expropriation Bill was subsequently gazetted for public comment in November 2007.This was followed by workshops and public hearings in Parliament during 2008;

The Expropriation Bill [B16-2008] was however withdrawn from Parliament in September 2008 to allow for further consultations. In March 2013 Cabinet approved that the revised draft Bill be gazetted for public comment;

NEDLAC adopted its task team's report on the Bill in February 2014 which largely supported it

The Bill was submitted to Parliament for the second time in February 2015 and a year later, on 26 May 2016 the Expropriation Bill[B4D-2015] was passed into

law. Following objections, the President refrained from assenting to the Bill and instead invoked section 79(1) of the Constitution to remit the Bill to Parliament.

Parliament deliberated on the matter and on 4 September 2018 rejected the Bill which signalled the rescission of the previous decision to pass the Bill.

Parliament then passed a motion to establish the Joint Constitutional Review Committee to look into the feasibility of amending section 25 of the Constitution to explicitly provide for expropriation of property with nil compensation.

The Expropriation Bill, 2019 seeks to particularly facilitate the achievement of land reform and sustainable human settlements by means of the insertion of clause 12(3) in the proposed legislation.

Clause 12(3) of the Expropriation Bill [B-2019] caters for expropriation with nil compensation in certain specified circumstances.

Clause 12(3) of the Expropriation Bill, 2019 is an extension to the general compensation scheme provided for in section 25(3) of the Constitution, 1996. Clause 12(3) provides as follows;

" It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to:

(a) When a court or arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), it may be just and equitable for no compensation to be paid having regard to all circumstances;

(b) where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value;

(c) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to need the land for its future activities in that regard, and the organ of state acquired the land for no consideration;

(d) notwithstanding registration of ownership in terms of the Deeds Registries Act 47 of 1937, where an owner has abandoned land by failing to exercise control over it;

(e) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.

(f) when the nature or condition of the property poses a health, safety or physical risk to persons or other property.

The proposed measure seeks to facilitate access to land on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation has the potential to reduce unemployment[1], poverty, homelessness, criminality and morbidity. The benefits thereof would be the promotion of entrepreneurship, food security and productivity of the nation in general.

1.2 What are the main roots or causes of the problem?

The legal regime had discriminated unfairly against black South Africans prior to 1994. This unfair discrimination hindered blacks from participating equally with their white compatriots in the economy. The Expropriation Act, 1975 is one of the legion of discriminatory legislative measures that were applied by the then governments to dispossess black South Africans of their properties and thereby reduce them to penury by denying them compensation or fair compensation, if at all.

A pointed example of the public purpose to which the Expropriation Act, 1975 and expropriation law before it were used was to acquire land for the South African Development Trust (SADT) with the objective of homeland consolidation. The results of the homeland system were the creation of a migrant labour system, lack of economic opportunities, poverty, overcrowding and generally the absence of the necessary amenities of life for the black populace.

1.2. What are the main root causes of the problem identified above?

What socio-economic problem does the proposal aim to resolve	**What are the main roots or causes of the problem**
Inequitable access to property and natural resources.	Unregistered /informal rights not recognised and thus non compensable; No recourse to legal institutions due to non recognition of unregistered rights thus no equal protection and benefit of the law. Inequality before the law
	Old order legislation; Property speculation; Inadequate government programmes due to lack of effective planning and execution.
.	Lack of economic opportunities.
	Inadequate state property disposal mechanisms;

[1] Stats SA media release of 30 July 2019 reports unemployment rate increased by 1,4% to 29,0% (Source- Stats SA QLFS- Q2:2019)

	Incoherent and burdensome legislative regimes; Property speculation; and Abandoned properties.

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The aim of the Expropriation Bill, 2019 is to foster a uniform expropriation dispensation for organs of state in the three spheres of government. This will be achieved through the reinforcement of the principles of co-operative government and intergovernmental relations and the introduction of an expropriation register.

Alignment of the Expropriation Bill, 2019 to the Constitution, 1996 will ensure that the proposal gives effect to the administrative justice and equality provisions of the Constitution. This will ensure that every person affected by expropriation is given a fair chance to make representations and be heard, appeal or review any adverse decision or approach the courts to seek redress. This approach to expropriation of property in effect affirms the Rule of Law principle.

The Expropriation Bill, 2019 further obviates the possibility of an irrational expropriation by requiring consultation with affected parties. This approach is desirable to ensure that the economic potential of property identified for acquisition by an expropriating authority is unlocked as also the attendant viability aspects of such an acquisition. Issues such as the nature and extent of economic opportunities to be provided by a particular expropriation of property will thus be known in advance.

1.4. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

Option 1.	The Expropriation Act 63 of 1975 currently fulfils the role of the required law of general application referred to at section 25(2) of the Constitution, 1996. To date, Courts have interpreted this legislation by applying the provisions of the Constitution,1996 directly to it as a way of harmonising it with the spirit and purport of the constitutional provisions. The Constitutional Court has adjudicated several expropriation disputes applying the Constitution directly to the Expropriation Act,1975. However, this piecemeal approach is unsustainable and has its inherent risks and flaws. The one major risk is the possibility of an erroneous judgement based on a wrong interpretation of the Expropriation Act, 1975 and the resultant wrong interpretation and application of the constitutional provisions of the matter for decision before the Constitutional Court. As the court of last instance, such an erroneous judgement by the Constitutional

	Court cannot be undone. The policy cost implications for such a scenario could be high due to the undesirable convoluted application of the law that would have preceded the judgement alluded to above.
Option 2.	The Restitution of Land Rights Act 22 of 1994 , other land reform legislation, Deeds Registries Act 47 of 1937, Electricity Regulation Act 4 of 1986, Infrastructure Development Act 23 of 2014 and many others provide for expropriation of property as a way of implementing their respective programmes. The programmes implemented through expropriation of property using the legislations referred to earlier includes the cross referencing and application of the provisions of the Expropriation Act, 1975. The Restitution programme has for instance enhanced its expropriation processes by developing a customised expropriation process that incorporates the compensation provisions of the Constitution and the administrative justice provisions of PAJA. This has effectively rendered the applicability of the compensation provisions of the Expropriation Act, 1975 in so far as the Restitution of land rights programme obsolete although it remains on the statute books.

PART TWO: IMPACT ASSESSMENT

2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of conflict
Expropriation (Establishment of Undertakings) Act 39 of 1951	Trade and Industry	**Sections 2 & 3**	None
Harbour Construction Act 28 of 1972	Transport	**Section 2**	None
Urban Transport Act 78 of 1977	Transport	**Section 20**	None
Conservation of Agricultural Resources Act 43 of 1983	Agriculture, Land Reform and Rural Development	**Section 14**	None
Less Formal Township Establishment Act 113 of 1991	Agriculture, Land Reform and Rural Development	**Section 2**	None

Airports Company Act 44 of 1993	Transport	**Section 16**	None
Air Traffic And Navigation Services Company Act 45 of 1993	Transport	**Section 15**	None
Provision of Land and Assistance Act 126 of 1993	Agriculture, Land Reform and Rural Development	**Section 12**	None
Restitution of Land Rights Act 22 of 1994	Agriculture, Land Reform and Rural Development	**Section 42E**	None
Extension of Security of Tenure Act 62 of 1997	Agriculture, Land Reform and Rural Development	**Section 26**	None
South African Schools Act 84 of 1996	Basic Education	**Section 58**	None
Housing Act 107 of 1997	Human Settlements	**Section 9(3)**	None
Water Services Act 108 of 1997	Water and Sanitation	**Section 81**	None
National Water Act 36 of 1998	Water and Sanitation	**Section 64 and 65**	None
The South African National Roads Agency Limited and National Roads Act 7 of 1998	Transport	**Section 41**	None
National Forests Act 84 of 1998	Environment, Forestry and Fisheries	**Section 49**	None
National Environmental Management Act 107 of 1998	Environment, Forestry and Fisheries	**Section 36**	None
National Heritage Resources Act 25 of 1999	Sports, Arts and Culture	**Section 46**	None
Nuclear Energy Act 46 of 1999	Mineral Resources and Energy	**Section 44**	None
World Heritage Convention Act 49 of 1999	Sports, Arts and Culture	**Section 30**	None
Local Government: Municipal Systems Act 32 of 2000	Co-operative Governance	**Section 60**	None
Gas Act 48 of 2001	Mineral Resources and Energy	**Section 32**	None

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

The proposed regulatory measure is intended to align the authority of the state to use its dominant position to unilaterally acquire privately held property for use in the public interest with the values and provisions of the Constitution,1996.

The power of the state to expropriate in terms of the Expropriation Act 63 of 1975 is generally unfair to the private property owner. This is manifested by lack of administrative justice, disproportionate treatment of legal subjects and non-facilitation of equitable access to property and natural resources in the existing expropriation legislation.

b) How does the proposal aim to bring about the desired change?

The proposed expropriation legislation intends to introduce a uniform expropriation framework for organs of state in the national, provincial and local spheres of government.

This will be achieved through the implementation of uniform procedure and norms for expropriation. In order to facilitate the acquisition of privately owned property in a cost effective manner, compensation for expropriation will be determined at nil in certain specified instances to enable the state to meet its socio-economic objectives.

2.3. Consultations

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

Consulted Government Departments, Agencies and Other Organs of State

Department's name	What do they see as main benefits, Implementation/ Compliance costs and risks?	Do they support or oppose the proposal?	What amendments do they propose?	Have these amendments been incorporated in your proposal? If yes, under which section?
Agriculture, Land Reform & Rural Development	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A
Human Settlements	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	Proposed that the urgent expropriation provisions cater explicitly for the Emergency Housing Programme.	This is a form of an emergency already catered for under the urgent expropriation provisions.
Environment, Forestry & Fisheries	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	That the proposal specifically provide for expropriation for environmental purposes.	No. Section 36 of the National Environmental Management Act 107 of 1998 already bestows the power to expropriate on the Minister of Environment, Forestry & Fisheries.

Justice & Constitutional Development	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability. Negotiations. investigations. Negotiations	They support the proposal.	Amendment of definition of court and amendment of mediation to conciliation	Definition of Court and Clause 21(2)
Transport	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations	They support the proposal.	None	N/A
Basic Education	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A
South African Police Service	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A
Arts and Culture	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A

Consulted stakeholders outside government

Name of Stakeholder	What do they see as main benefits, Implementation/ Compliance costs and risks?	Do they support or oppose the proposal?	What amendments do they propose?	Have these amendments been incorporated in your proposal?
(National Forum For Dialogue 27-28 March 2018) AgriSA	Measure will enable access to agricultural land to the previously excluded. AgriSA through its value chain network could get new entrants into contact with established markets or access to credit line. Concerned about the monitoring of activities on expropriated land to ensure full utilisation thereof in accordance with original purpose. Food insecurity risk is a serious threat. Most commercial farmers no longer willing to invest on land due to fear of expropriation without compensation. Banks no longer view farming as safe for lending money due to the uncertainty created by the proposal.	They cautiously support the proposal	Market value should remain as key property valuation criterion.	No.
Banking Association of South Africa	Measure could open up business partnerships opportunities between established business and new business entrants. No information available on number, skills base and areas of interest for aspirants. This creates uncertainty for planning purposes and the resultant negative impact on the economy.	They support the proposal.	Bill should state that expropriated property should be used only for the purpose for which it was expropriated.	No.

	Reluctance to invest further by commercial farmers is causing many business ventures to collapse. In turn the Financial sector is suffering a real and potential financial loss which may not be recoverable. Banking sector through its world class infrastructure is willing to co-operate in the implementation of measure if it is compliant with Constitution.			
SALGA	Promotion of efficiency in governance and uniformity.	They support the proposal.	Clarification of clause 12(3) concepts of abandoned land, and speculative purposes	Yes
NHTL	Benefits will be in respect of infrastructure installation in rural areas. Advocacy programmes for rural folks & their leaders	They support the proposal.	Expropriation of communal land must comply with the constitution.	Yes.
American Chamber of Commerce	Clarity of legal position in respect of expropriation of property.	They support the proposal.	Vague definition of unregistered rights. Owner not defined.	Yes.
Nedbank	Legal certainty in respect of expropriation of property.	They support the proposal.	Property beyond definition of section 25 of constitution must be provided.	No.
Eskom	Legal certainty in respect of expropriation of property. Negotiations, notifications and property investigations.	They support the proposal.	No clarity of what effect will be there if the municipality does not respond to requests to comment on an expropriation.	No.
Nedlac (in 2013)	Legal certainty in respect of expropriation of property. Negotiations, notifications and property investigations.	They support the proposal.	None	No.

b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

Issue of disagreement	Evaluation	Support	Opposition
Government officials may abuse the powers in the legislation.	The apprehension appears to be misplaced. There are sufficient checks and balances in both government policy and different legislations to keep the issue in check. Continuous rights & obligations advocacy drives should be used to get persons to know the relevant legal instruments.	Weak	Very strong
Expropriation without compensation clause is unconstitutional.	Sound legal advice has been obtained on this matter. As currently drafted this clause complies with the Constitution. Doubts expressed in this regard could be emanating from an uninformed point of view. The entire Expropriation Bill, 2019 will still be tested in the courts for its constitutional soundness once it is passed into law.	There is little support for the position.	There is strong support for the Bill.
The Bill will deter investors.	There is no empirical evidence to support this observation. Investors' interest is whether the Bill complies with the Constitution. They are also interested in a stable and safe investment environment. South Africa meets this requirement based on its strong adherence to the Rule of Law principle.	Weak support for position.	Strong support for the Bill.

2.4. Assessment of costs and benefits to stakeholders inside and outside of government

3.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
AgriSA	Expropriation for land reform purposes may require the organisation's constituency to budget for relocation and starting new farming ventures elsewhere.	Normally there are no costs involved unless through litigation.	Social cohesion and economic inclusivity.	
BASA	The Banks may have to harmonise their systems with those of government to ensure that they keep track of expropriation on mortgaged properties.	It is not envisaged that there would be compliance costs.	The constituent members will generally benefit from the increase in the mortgage book due to qualifying new entrants. In respect of land reform projects, this could be supplemented by government subsidies or grants for farming purposes thus mitigating banks' debt risk exposure.	
Landowners	Relocation costs & farming production costs.	Litigation costs where he/she opts to oppose expropriation.	Social cohesion and economic inclusivity.	
Beneficiaries	Input costs.	Administrative in nature, viz, SARS, Dept. of Labour, Dept. of Agriculture, Land Reform & Rural Development and the Department of Trade & Industry.	Social cohesion and economic inclusivity.	

3.1. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	**How will they benefit?**
Rural Communities	Infrastructure development, housing and rural development.
Urban Communities	Infrastructure development, social housing and employment creation.

List of cost bearers (groups that will bear the cost)	**How will they incur / bear the cost**
Private land owners	Loss of income due to expropriation of property.
Government	Payment of compensation, dispute adjudication, negotiations and property registrations.

2.6 Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- *The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- *The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- *To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and*

benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
AgriSA	Expropriation for land reform purposes may require the organisation's constituency to budget for relocation and starting new farming ventures elsewhere.	Normally there are no costs involved unless through litigation.	Social cohesion and economic inclusivity.	
BASA	The Banks may have to harmonise their systems with those of government to ensure that they keep track of expropriation on mortgaged properties.	It is not envisaged that there would be compliance costs.	The constituent members will generally benefit from the increase in the mortgage book due to qualifying new entrants. In respect of land reform projects, this could be supplemented by government subsidies or grants for farming purposes thus mitigating banks' debt risk exposure.	
Landowners	Relocation costs & farming production costs.	Litigation costs where he/she opts to oppose expropriation.	Social cohesion and economic inclusivity.	
Beneficiaries	Input costs.	Administrative in nature, viz, SARS, Dept. of Labour, Dept. of Agriculture, Lad Reform & Rural Development and the Department of Trade & Industry.	Social cohesion and economic inclusivity.	
AgriSA	Expropriation for land reform purposes may require the organisation's constituency to budget for relocation and starting new farming ventures elsewhere.	Normally there are no costs involved unless through litigation.	Social cohesion and economic inclusivity.	

DPWI	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Maintenance of the expropriation register, PAJA compliance.	Realisation of government service delivery objectives.	
Municipalities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs..	PAJA compliance & prescription notification subscription	Realisation of government service delivery objectives.	
Deeds Registries	Registration fee and mortgage cancellation.	PAJA compliance & prescription notification subscription	Realisation of government service delivery objectives.	
Other Expropriating Authorities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs..	PAJA compliance & prescription notification subscription	Realisation of government service delivery objectives.	

2.7 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and

b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

Department	**Budget**	**Staffing**
Agriculture, Land Reform & Rural Development.	Expropriation is a function that has been there & is catered for in the existing budgets. There may be some cost reduction where an expropriation takes place with nil compensation.	There may be a need for additional capacity due to increased workload. However, this is not an additional function.
Public Works & Infrastructure	Expropriation is a function that has been there & is catered for in the existing budgets. The requirement of an expropriation register will require a budget. There may be some cost reduction where an expropriation takes place with nil compensation.	There may be a need for additional capacity due to increased workload especially the administrative part of the expropriation register.

Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

2.8 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

For groups outside of government (add more lines if required)

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
AgriSA	Relocation & Production costs	Dialogue initiatives between government and organisation representing commercial farmers interests ongoing.
BASA	Systems upgrade and harmonisation with government IT systems to monitor expropriations on mortgaged properties.	Dialogue initiatives between government and organisation representing banks interests ongoing.
Beneficiaries	Input costs	Government has explored various subsidisation schemes.

For government agencies and institutions:

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
DPWI	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.
Municipalities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.
Other Expropriating Authorities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.

2.9 Managing Risk and Potential Dispute

a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.

b) Describe measures taken to manage the identified risks. Add more rows if necessary.

Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.

Identified risk	**Mitigation measures**
Non acceptance of the proposed nil compensation provision by individuals and interest groups representing property owners.	Intensify public participation in legislation making to allay unfounded fears about the proposal.
Litigation.	The proposed Land Court Bill will incorporate Alternative Dispute Resolution (ADR) to discourage costly litigation.

c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

(a) **Dispute between government departments and government agencies**

- Disputes between government agencies could arise from competing/conflicting service delivery interests.

(b) **Disputes between government agencies/parastatals and non-state actors**

- These could arise from the divergence of interests in respect of the purpose for the proposed expropriation or compensation or non-compensation for an expropriation.

(c) **Disputes between non-state actors**

- In the land reform context, these types of disputes, between landowners and claimants, could rear their head where a choice must be made between the restoration of specific dispossessed property, alternative land and/or financial compensation based on the argument of the non-feasibility of restoration of the dispossessed property.

Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.

Nature of possible dispute (from sub-section above)	**Stakeholders involved**	**Dispute-resolution mechanism**
Competing service delivery interests.		Intergovernmental Relations Framework Act, 2005 dispute resolution mechanisms.
Divergence of interests in respect of the purpose or quantum of compensation or non-compensation		Court adjudicated Alternative Dispute Resolution mechanisms – mediation, arbitration, conciliation or combination.
Land Reform context: feasibility or non feasibility of restoration of dispossessed property.		Negotiation or Court adjudicated Alternative Dispute Resolution mechanisms – mediation, arbitration, conciliation or combination.
Competing service delivery interests.		Intergovernmental Relations Framework Act, 2005 dispute resolution mechanisms.

Would it be possible to establish or use more efficient and lower-cost dispute-resolution mechanisms than those now foreseen? These mechanisms could include, for instance, internal appeals (e.g. to the Minister or a dedicated tribunal) or mediation of some kind.

Nature of possible dispute	**Proposed improvement in dispute-resolution mechanism**
Competing service delivery interests.	Consultation forums created in terms of protocols/memoranda of agreement.
Dispute arising from the purpose of expropriation or payment of non-payment of compensation	Court administered/mediated ADR process. This will ensure that disputants participate in process voluntarily and in good faith.
Land Reform context: feasibility or non feasibility of restoration of dispossessed property.	Negotiation based on a budget and time bound framework to which disputants commit in advance.
Competing service delivery interests.	Consultation forums created in terms of protocols/memoranda of agreement.

2.10 Monitoring and Evaluation

a) When is implementation expected to commence after the approval of the proposal?

- Implementation is expected as soon as the Bill is passed into law. There are already human and material resources to implement the law as this will be a continuation from the previous expropriation legislation, namely, Expropriation Act 63 of 1975

b) Describe the mechanisms that you will apply to monitor the implementation of the proposal after being approved.

- The proposed legislative measure intends to introduce an expropriation register. In terms of this approach, the record of all expropriations across the three spheres of government will be maintained. The Register will also enable government to avail information on expropriations to interested parties.
- The existing internal monitoring and evaluation reporting system will also be employed to capture performance, lessons learnt and matters for policy consideration

c) Who will be responsible for monitoring the implementation of this proposal?

- The internal monitoring and evaluation unit of the department will monitor performance in terms of this proposal in the same manner as all other programmes of the department.

d) What are the results and key indicators to be used to for monitoring? Complete the table below:

Results	**Indicators**	**Baseline**	**Target**	**Responsibility**
Impact: long term result (change emanating from the implementation of the proposal in the whole of society of parts of it)	Developments arising from property expropriation per government programme	10	10	DPWI
Outcome: medium term result (what beneficiaries achieve as a result of the implementation of the proposal)	Number of property expropriations per financial year	10	10	DPWI

e) When will this proposal be evaluated on its outcomes and what key evaluation questions will be asked? Below please find evaluation questions for your consideration:

   i. *What was the quality of proposal design/content? (Assess relevance, equity, equality, human rights)*

   ii. *How well was the proposal implemented and adapted as needed? (Utilise the Monitoring and Evaluation plan to assess effectives and efficiency)*

   iii. *Did the proposal achieve its intended results (activities, outputs and outcome) as per the Monitoring and Evaluation plan?*

   iv. *What unintended results (positive and/or negative) did the implementation of the proposal produce?*

   v. *What were the barriers and enablers that made the difference between successful and failed proposal implementation and results*

   vi. *How valuable were the results of your proposal to the intended beneficiaries?*

f) Please provide a comprehensive implementation plan

g) Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

- Notices of expropriation;
- Assessment of compensation;
- Urgent expropriations;
- Withdrawal of decision to expropriate; and
- Dispute Resolution

For the purpose of building a SEIAS body of knowledge please complete the following:

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PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
Beneficiaries	
1. Home seekers	Access to social housing
2. Emergent entrepreneurs	Access to land and subsequently business opportunities in different sectors.
3. Home seekers	Access to social housing
Cost bearers	
1. Land owners	They have to give up partial or entire land holdings.
2. Organs of state	Organs of state must avail state land for various socio-economic programmes of government
3. business sector	Provide opportunities to the previously excluded through financing.

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?
    - The risks from undesired costs may emanate mainly from litigation;
    - Commercial farmers could be the main opponents of this legislative measure simply because it seeks to level the landownership playgrounds. The disproportionate distribution and access to resources is the key reason for the current socio-economic gap dilemma facing government;
    - The lack of dexterity in programme co-ordination has been the greatest undoing which often led to duplication and a wastage of resources.

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.
    - The requirement for the maintenance of an expropriation register will inevitably require a separate budget and human resources.
    - There are also budgetary implications for the training of officials in the implementation of the legislation and for the Alternative Dispute Resolution process.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?

   - The introduction of the measure will reduce the risk and cost of litigation substantially since it will be conforming to the provisions of the Constitution,1996;
   - The proposed legislation promotes dialogue between organs of state and the party affected by an expropriation;
   - The strong position of the state bestowed by the proposed legislation is mitigated by strong checks and balances in the measure itself and the Constitution.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

Option 1.	*Ad Hoc* measures using other legislation would have to be adopted. For instance, in respect of administrative justice the relevant legislation would be applicable. In other instance the direct application of the constitutional provisions would have to be resorted to. This is currently what obtains under the Expropriation Act, 1975 regime.
Option 2.	Emphasis may have to be put on the negotiations approach. This will require a strong policy support structure to ensure consistency in the handling of cases. Negotiated expropriations could have the effect of minimising litigation.

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

   - Enhance public participation in legislation making;
   - Insert the nil compensation provision in the Expropriation Bill,2019; and
   - Introduce the court adjudicated alternative dispute resolution mechanisms through the proposed Land Court Bill.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	X	
b. Necessary to achieve the priorities of the state?	X	
c. As cost-effective as possible?	X	
d. Agreed and supported by the affected departments?	X	

9. Which of the National priorities would be most supported by this proposal?

PRIORITY 1: Economic transformation and job creation **(X)**

PRIORITY 2: Education, skills and health

PRIORITY 3: Consolidating the social wage through reliable and quality basic services

PRIORITY 4: Spatial integration, human settlements and local government (**X)**

PRIORITY 5: Social cohesion and safe communities (**X)**

PRIORITY 6: Building a capable, ethical and developmental state

PRIORITY 7: A better Africa and world.