

Legal snag in expropriating foreign-owned land

Department of Trade & Industry officials have warned against expropriating land owned by foreign nationals, saying it contravenes existing bilateral investment treaties. Doing so could also result in SA being denied access to key markets such as the US, notes a [Business Day](#) report. The country has 22 such bilateral agreements, but the Cabinet decided in 2010 to terminate the arrangements following concerns that the treaties were unbalanced in favour of the investors. Some of the treaties were said to be inconsistent with the Constitution, including its transformation objectives. **While SA recently started terminating these treaties the pacts contain a 'survival clause' that guarantees that investment protections continue for between 10 and 20 years.** Lawful expropriation of foreign investment should be for a public purpose, on a non-discriminatory basis, under due process of the law, and based on the payment of prompt, adequate and effective compensation, department officials told MPs. The officials were briefing the *ad hoc* committee tasked with redrafting section 25 of the Constitution. Investors are increasingly worried about the government's proposals to expropriate foreign land without compensation. Commentators have warned that wholesale expropriation without compensation will discourage investment, threaten food security and hurt economic activity and job creation. Legal experts have also warned that expropriation of foreign-owned property without compensation constitutes a violation of international law and several treaties to which the country is a party. In an opinion piece in 2018, Peter Leon, Hannah Ambrose and Ernst Müller, of international law firm Herbert Smith Freehills, wrote that a country cannot simply implement domestic legislation while avoiding its international law obligations.

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