



Land Reform Policy Committee

Department of Land Affairs

Departement van Grondsake

Kgoro ya tsa Naga

UMnyango wezoMhlaba

POLICY AND PROCEDURES FOR EXPROPRIATION OF LAND IN TERMS OF ACT 126 AND ESTA

(Submitted by: Directorate: Redistribution Policy And Systems)

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1. DISCUSSION

1.1 BACKGROUND

The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provides for property (which include land) to be expropriated for public purpose or public interest and that public purpose and public interest include the nation's commitment to land reform.

In terms of the White Paper on land policy, expropriation will be considered in situations where there is no reasonable alternative land and the owner either

will not sell, or will not negotiate a fair price. In considering what is a fair price, regard must be had to the compensation formula set out in the Bill of Rights .

It is therefore accepted policy of the Department to engage in expropriation of land to the benefit of land reform beneficiaries. However, as yet, there are no procedural guidelines to effect expropriation of land relevant to the Department. The process, as prescribed in the Expropriation Act, 1975 (Act 63 of 1975), (hereafter referred to as the Expropriation Act), had to be adjusted to take into consideration Section 12 of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993), (hereafter referred to as Act 126) and Section 26 of the Extension of Security of Tenure Act, 1997 (Act 62 of 1997), (hereafter referred to as ESTA), with due regard to the conditions as set out in section 25(2),(3)&(4) of the Constitution.

During June 1998, the KwaZulu Natal Provincial office engaged in talks regarding expropriation of property in a redistribution project. This demonstrated the need to devise a procedural mechanism for expropriations. A consultant from the attorneys firm Edward Nathan & Friedland Inc was appointed, to provide the Directorate with assistance in setting in place a procedural framework for expropriations in redistribution projects.

This document deals with expropriation that will be undertaken in terms of Act 126 and ESTA for any land reform project in terms of these Acts i.e. redistribution or tenure. It does not set out the steps to be followed in terms of The Restitution of Land Rights Act, 1994 (Act 22 of 1994) or the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996).

1.2 DELEGATION OF POWERS TO EXPROPRIATE IN TERMS OF ACT 126 AND ESTA

The Minister may expropriate land in terms of Section 12 (1) of Act 126 and Section 26(1) of ESTA. This means that the Department can exercise equivalent powers to that of the Department of Public Works with regard to expropriations.

1.3 THE RELATIONSHIP BETWEEN THE EXPROPRIATION ACT, ACT 126/ESTA AND THE CONSTITUTION

The Minister can expropriate land in terms of the procedures prescribed by the Expropriation Act. A fair hearing must be given to the owner of the land in question and compensation must be determined as set out in the Constitution.

Section 12 of Act 126/Section 26 of ESTA provides the Minister with equivalent powers to that of the Minister of Public Works with regard to expropriations. This, however, does not allow the Minister to establish procedures outside the ambit of the Expropriation Act. The Department is still obliged by law to follow the procedures set out in the Expropriation Act.

Furthermore, section 12 of Act 126/section 26 of ESTA, stipulates that the owner of the land in question must be given a hearing before the land can be expropriated. Act 126/ESTA also stipulates that compensation shall be determined and paid as prescribed in the Constitution with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, which refers to interest payable on the amount of compensation, and also to factors which shall and shall not be taken into account in determining compensation.

Section 25(3) of the Constitution provides that the amount of compensation must be just and equitable and should take the following into consideration:

- the current use of the property
- the history of the acquisition and use of property
- the market value of the property
- the extent of State direct investment and subsidy in the acquisition and beneficial capital improvement of the property
- the purpose of expropriation.

1.4 IDENTIFIED AND UNIDENTIFIED BENEFICIARIES

The Minister may expropriate land on behalf of identified beneficiaries as well as for unidentified beneficiaries. The procedures in terms of this document and accompanying standard documents, however, proceed on the basis that

expropriation will be undertaken on behalf of identified beneficiaries. Thus, the project has already proceeded to the point where either the Minister has approved the subsidies in terms of section 2 or 10 of Act 126/section 4 of ESTA and the owner now refuses to sell with regard to the price of the land, or the project will be submitted for approval of subsidies in terms of section 2 or 10 of Act 126/section 4 of ESTA as part of the recommendation to expropriate land. In the second scenario, the project cannot proceed, because the owner won't sell at appropriate price or there is no suitable alternative land and the only alternative option is to recommend that the land be expropriated. If expropriation is to take place for unidentified beneficiaries, then the procedures and standard documents will need to be altered accordingly.

1.5 WHEN TO INCLUDE THE COMPENSATION OFFER

The procedures developed include that the Minister will offer the amount, time and manner of payment of compensation. The Expropriation Act does not prescribe that the amount offered must be given in the Expropriation notice. However, the amount of compensation must be offered to the property owner when the owner is given a hearing (Notice of Recommendation of Expropriation and Compensation). If the amount of compensation is not determined at this stage, it might be that the amount of compensation is not acceptable for the Department and that the Department would then prefer not to expropriate. In special circumstances it might be necessary to consider not putting in the amount of compensation, but only at the discretion of the Director General, may the amount of compensation not be included in the hearing notice.

1.6 PROCEDURAL FRAMEWORK FOR EXPROPRIATIONS

STEPS IN THE EXPROPRIATION CYCLE	PROCESS	ACTION REQUIRED	TIME FRAME
Decision on whether to consider expropriation	Adhere to Criteria Determination of compensation	Valuation	
Preparing for the hearing:	Approval memorandum to		

Recommendation of Expropriation and Compensation	DG Notice of recommendation for expropriation Memorandum of justification for expropriation	Submission to DG	
The Hearing: Serving the Notice of Recommendation and Compensation and Memorandum for Justification	How to deliver What if the owner responds	Deliver notice of recommendation of expropriation to owner of property	21 days
Preparing for expropriation	Prepare memorandum to the Minister Prepare the notice of expropriation and compensation	Submission to Minister	6 days
Serving the expropriation and compensation notice		Deliver notice of expropriation and compensation to owner of property	2 weeks
Payment of compensation		Hand over cheque to owner of property	60 days
Registration and transfer	Prepare for the registration Prepare for transfer	Register expropriation with Registrar of Deeds Conveyancer see to transfer of property	

1.7 PROCEDURES

In summary, the process to be followed is:

The Minister must, prior to expropriation, give the property owner a hearing. This hearing is given through a Notice of Recommendation of Expropriation and Compensation and a Memorandum justifying the Recommendation of Expropriation and Compensation. The owner of the property has 21 days to

respond to the notice. After this period the Minister can expropriate the property. An expropriation notice, signed by the Minister in which he determined the amount, time and manner of compensation and the date of expropriation, must be delivered to the owner of the property in the prescribed manner. On the date of expropriation, the Department pays the owner of the property 100% (or 90% if a portion is to be expropriated) of the amount offered. This will ensure that the Department does not have to pay interest on any outstanding funds. A copy of the expropriation notice must be lodged with the Registrar of Deeds, immediately after expropriation. The State takes possession of the property on date of expropriation and the beneficiaries can move onto the land. A conveyancer must be appointed to effect transfer of the property into the name of the beneficiaries.

1.7.1 Decision to recommend expropriation

A decision on whether to recommend expropriation of land on behalf of beneficiaries, must be made by the Provincial Office and Provincial Director.

The decision must be based on the following:

- a) The Department and the property owner cannot reach agreement on sale of the land or on the price of the property; and
- b) There is no suitable alternative land available.

The Provincial Office is also responsible for proposing to the DG the amount of compensation to be offered to the property owner. The Provincial Office must ensure that none of the beneficiaries have previously obtained a State Grant.

If the project has not yet been approved in terms of section 2 or 10 of Act 126/section 4 of ESTA, the project must also be submitted for approval in terms of the standard procedures. The submission for approval can be submitted with the decision to recommend expropriation of the land. However, the decision to recommend expropriation is subject to the approval of the project in terms of section 2 or 10 of Act 126/section 4 of ESTA , by the Minister.

1.7.1.1 The amount of compensation

Compensation must be based on the principles as set out in section 25(3) of the Constitution. The main thrust of these principles is that the market value of the property must be determined and that past state subsidies and investment must be taken into account.

Compensation must therefore be determined as market value adjusted for the value of past subsidies.

In most instances, a market valuation would be available as part of the normal procedures of the project. A valuer should be approached to determine the amount of compensation. This should be based on the Gildenhuis formula variation. The valuer must be given a Terms of Reference which sets out the formula to be used.

If the owner would not allow a valuer on his/her property, the Provincial offices must obtain authorisation, as the Minister may authorize any person to enter

upon the property to determine the value thereof. However, the valuer, may not, without the consent of the property owner or occupier, enter any building or enclosed yard attached to any building, unless he or she has given the property owner or occupier at least 24 hour's notice.

The valuer must determine the amount of compensation based on a variation on the Gildenhuys formula.

1.7.1.1.1 Variation on Gildenhuys formula

The formula for determining compensation in the context of expropriation is the following variation on the Gildenhuys formula:

$$\text{Compensation} = C - k_0 \bullet (B - A) - E_1 \bullet k_1 - E_2 \bullet k_2 - E_3 \bullet k_3 \dots,$$

where

C is the present day market value of the property,

k_0 is the inflation factor related to land acquisition, based on the cpi

B is the market value of the property at the time of acquisition,

A is the actual price paid at the time of acquisition,

E_1, E_2, E_3 , etc., are the historical values of infrastructure and interest rate subsidies received, and

k_1, k_2, k_3 , etc., are the corresponding inflation factors for these subsidies, based on the cpi.

1.7.1.1.2 Example based on the Gildenhuys formula

The following example is fiction made up of ingredients of various actual cases.

a) Essential facts

In late 1998, an independent valuer estimated the fair market value of Tara Farm at R3.35 million, including improvements, excluding machinery and other moveable assets. Ms O'Hara purchased Tara Farm in 1965. Estimated market value was R160 000, but Ms O'Hara paid R112 000. In order to make the purchase, Ms O'Hara took out a 25 year loan with the Agricultural Credit Board (ACB), on which the interest rate was 5% per annum from 1966 through 1990. A 25% fencing subsidy was obtained in 1970, and again in 1976. In 1970, the expenditure on fencing was R4 000, of which the Department of Agriculture Contributed R1 000. In 1976, another R3 000 was received, implying a subsidy component of R750.

b) *Acquisition subsidy*

The value of the acquisition subsidy in 1965 was $160\,000 - 112\,000 = 48\,000$. We translate this into today's terms by noting that the value of the cpi in 1965 was 4.6, and in 1998, 123.6, implying that between 1965 and today, the general price level has increased by a factor of $123.6 \div 4.6 = 26.87$. Therefore, the value of the 1965 subsidy in today's terms is $48\,000 \times 26.87 = R1\,289\,760$.

c) *Infrastructure subsidy*

The value of the cpi in 1970 and 1976 are 5.4 and 9.4, respectively. This implies that, since 1970, prices have increased by a factor of $123.6 \div 5.4 = 22.89$, and since 1976, by a factor of $123.6 \div 9.4 = 13.15$. The value of the fencing subsidy for 1970 is therefore $22.89 \times 1\,000 = R22\,890$, while that for 1976 is $13.15 \times 750 = R9\,862$. The total value of the fencing subsidy is therefore $R22\,890 + R9\,862 = R32\,752$.

d) *Interest rate subsidy*

Last but not least, the interest rate subsidy is calculated by means of finding the difference between the interest actually paid and what would have been paid if commercial rates had applied. This is done for each year, and the difference per year is then translated into a present value by means of the corresponding cpi factor. To find the interest payments in the first place requires working out on a spreadsheet, adjusting the annual repayments so as to pay off the loan in the prescribed period.

	<i>Interest paid</i>	<i>Interest payable</i>	<i>Difference</i>	<i>cpi</i>	<i>cpi factors</i>	<i>Present values</i>
	<i>at 5%</i>	<i>at comm. rates</i>				
1965						
1966	5 600	8 960	3 360	4.76	12.30	41 324
1967	5 483	9 251	3 769	4.93	11.90	44 832
1968	5 360	9 007	3 648	5.03	11.65	42 501
1969	5 230	8 742	3 512	5.19	11.29	39 652
1970	5 094	8 621	3 527	5.40	10.85	38 270
1971	4 952	8 637	3 686	5.70	10.28	37 891
1972	4 802	8 324	3 522	6.10	9.61	33 832
1973	4 645	7 686	3 041	6.70	8.75	26 601
1974	4 480	8 408	3 928	7.50	7.81	30 690
1975	4 307	8 759	4 452	8.50	6.89	30 693

1976	4 125	9 261	5 137	9.40	6.23	32 021
1977	3 934	8 918	4 984	10.50	5.58	27 817
1978	3 733	8 533	4 800	11.60	5.05	24 250
1979	3 522	7 849	4 327	13.10	4.47	19 357
1980	3 301	6 984	3 683	14.90	3.93	14 484
1981	3 069	7 724	4 655	17.20	3.41	15 860
1982	2 825	8 415	5 590	19.70	2.97	16 629
1983	2 569	8 334	5 766	22.20	2.64	15 219
1984	2 300	8 926	6 626	24.70	2.37	15 720
1985	2 018	8 757	6 739	28.80	2.03	13 713
1986	1 721	6 577	4 855	34.10	1.72	8 344
1987	1 410	4 776	3 366	39.60	1.48	4 981
1988	1 083	3 926	2 842	44.70	1.31	3 726
1989	740	3 602	2 862	51.30	1.14	3 269
1990	380	2 086	1 706	58.60	1.00	1 706
sum						583380

e) Putting it together

Putting these pieces together, the compensation due to the expropriation for the property is:

3 350 000
- 1 289 760
- 32 752
<u>- 583 380</u>
1 444 108

or R1.44 million.

1.7.2 Preparation for recommendation of expropriation and compensation

The Provincial Office must prepare a Notice of Recommendation of Expropriation and Compensation (Appendix 1). The following must be addressed in the notice:

- a) notification that a recommendation will be made to the Minister that he or she expropriate the identified property;
- b) notification that a recommendation will be made to the Minister regarding the amount of and the time and manner of payment of compensation;
- c) legal description of the property or right in property as it appears on the title deed. (If a portion of the property is being expropriated or only a certain right in property is being expropriated, then a complete description [including sketch plans where a portion is being expropriated] of that portion or right must be included.);
- d) notification that the property owner and any other interested person have a

right to make representations, but that any representations must be made within 21 days after the delivery date of the notice;

e) notification that a decision will be taken no earlier than 21 days after the delivery date of the notice; and

f) notification that the property owner is required to notify the Department of Land Affairs within 21 days after the delivery date of the notice whether any other person has any right or interest in the property not disclosed on the title deed (e.g., whether the property is leased, has been sold, or has a building erected on it which is subject to a builder's lien).

A memorandum justifying the Recommendation of Expropriation and Compensation (Appendix 2) must be attached to the Notice. The memorandum should include the following:

a) Justification for the recommended expropriation; and

b) Justification for the recommended compensation:

1. Current use of property;
2. The history of the acquisition and use of the property;
3. The market value of the property;
4. The extent of direct state investment and subsidy in the acquisition and beneficial capital and improvement of property;
5. The purpose of the expropriation; and
6. Other relevant circumstances.

Before submission to the DG, the Notice and Memorandum must be checked by Legal Services to ensure that the documents adhere to legal requirements. The documents should be e-mailed to Jayshree Naidoo.

The documentation should then be submitted to the DG in the prescribed submission file, with a covering memorandum (Appendix 3). The route form (Appendix 4) includes the following directorates:

CD: Redistribution, Land Rights and Development

Legal Services

Director General

If the DG agrees with the intended expropriation, he will sign the Notice of Recommendation of Expropriation and Compensation. The file goes back to Provincial Office. The DG's office must send a copy to the Minister for his information.

1.7.3 Serving the Notice of Recommendation of Expropriation and Compensation and the Memorandum for Justification of Recommendation of Expropriation and Compensation

The Provincial Office is responsible for delivering the notice and memorandum to the owner of the property. The owner gets 21 days to respond to the notice.

1.7.3.1 How to deliver:

If possible, the notice should be hand delivered. If the notice is hand delivered, then a witness should be taken with the planner making the hand delivery. In addition, the person accepting delivery should be requested to sign a receipt (Appendix 8). If the notice cannot be hand delivered, it should be posted by registered post and the 21 day response time should run from the 7th day after posting. If the address of the property owner or all of the land owners or any other interested person is not known or hand delivery or delivery by registered post is not possible, then the notice may be given by publication of it in the *Government Gazette* and once a week during two consecutive weeks in a newspaper circulating in the area in which the property is located.

Other interested persons include, but are not limited to the relevant municipality or municipalities, the persons on whose behalf the land is to be expropriated, leaseholders, bondholders or lien holders (if known), and anyone who has a right or interest recorded in the title deed or the register of the Registrar of Mining Titles or other government office.

1.7.3.2 What if the owner responds to the notice?

If the landowner or other interested party makes a request for additional time to make presentations or respond to the notice, the Department must decide whether to grant the request for additional time. In the normal course of events, unless there is reason not to grant an extension of time, a 21 day extension of time or such shorter extension as requested should be granted.

If the property owner or other interested party makes a request for an oral or public hearing, the Department must then decide whether such a hearing is required. That decision must be based on the circumstances of the particular case. If fairness dictates the holding of an oral or public hearing, then the Department should grant either an oral or public hearing or both. The nature of these expropriation proceedings are such that in the normal course of events, the issues can be decided on the papers. Thus, it will be in exceptional circumstances only that an oral or public hearing should be granted.

In exceptional cases, the Department may decide not to proceed with the proposed expropriation. Any response from the owner should be submitted to the DG with a recommendation by the Provincial Office on the next steps.

If the owner legally challenges the expropriation with regard to public interest, the Provincial Office should not proceed with the expropriation process until this has been resolved, unless the Director General decides to the contrary.

1.7.4 Preparation for expropriation

After 21 days response time (or extended time as indicated under 1.7.3.2) the Provincial Office recommends to the Minister that he or she expropriate the property at the recommended amount of compensation. To save time, this notice and other relevant documentation should be prepared in due time, so that when the 21 days lapsed, the Provincial Office is ready to submit to the Minister. The Provincial Office must execute their own deeds search to determine whether there are any bonds registered against the property. It is the Department=s responsibility to ensure that all mortgage bonds are cancelled and paid for.

The submission to the Minister should include a recommendation to the Minister to expropriate the identified property at the recommended amount of compensation and the Notice of Expropriation and Compensation.

The Memorandum recommending the Expropriation and Compensation (Appendix 5) includes the following:

- a) recommendation for expropriation;
- b) recommendation for the amount of compensation;
- c) legal description of the property or right in the property as it appears on the title deed (If a portion of a property is being expropriated or only a certain right in property is being expropriated, then a complete description [including sketch plans where a portion is being expropriated] of that portion or right must be included.);
- d) justification for the recommended expropriation and responses to any representations;
- e) justification for the recommended amount and time and manner of

payment of compensation and response to any representations; and

f) recitation of facts that show that the property owner (and all other interested persons) have been given adequate disclosure of the reasons for the recommended expropriation and a reasonable time to prepare and put forward representations. (A copy of the notice, sent to the property owner and other interested parties should be attached. Copies of any representations should be attached).

The Notice of Expropriation and Compensation (Appendix 6) should include the following:

a) legal description of the property or right in property as it appears on the title deed (If a portion of a property is being expropriated or only a certain right in property is being expropriated, then a complete description [including sketch plans where a portion is being expropriated] of that portion or right must be included.);

b) the date of expropriation and, if different, the date upon which the state will take possession of the property (This date should be 60 days from the date of the notice);

c) notification that the property will vest upon expropriation in the state and after transfer in the name of the beneficiaries;

d) the amount and time and manner of payment of compensation offered;

e) notification in terms of section 10(5) of the Expropriation Act that if the Minister and the property owner do not agree to the amount and the time and manner of payment of compensation within eight months, then the property owner will be deemed to have agreed to the amount and time and manner of compensation offered, unless the property owner makes an application to a court in terms of section 14 of the Expropriation Act for the determination of such (A section 10(5) notice;

f) notification to the property owner that he or she must deliver or cause to be delivered the title deed of the property to the Minister within 60 days of the date of delivery of the notice;

g) notification whether the property owner agrees with the amount and the time and the manner of payment of compensation offered and full details of such;

- h) notification of the address at which further documents in connection with the expropriation may be delivered or posted;
- l) attention should be drawn to the provisions of sections 9(1), as set out in 5.7.5.3) and 12(3)(a)(ii) of the Expropriation Act; and
- j) attention should be drawn to the fact that if a lessee has a right by virtue of a lease contemplated in section 9(1)(d)(l) of the Expropriation Act and the Minister had no knowledge of that lease, the offer of compensation may be withdrawn.

Before submission to the Minister the notice must be checked by Legal Services to ensure that it adheres to legal requirements. The notice can be e-mailed to Jayshree Naidoo.

The Notice and Memorandum, including copies of any representations should be submitted to the Minister.

The route form should include the following directorates (Appendix 7):

Legal Services

Director General

Minister

Implementation Branch: Noeleen Grossberg

Implementation Branch: Marianne Cloete - CPD

If the Minister decides to expropriate the property, the attached notice will be signed by him/her and returned to the Provincial Office.

1.7.5 Serving the expropriation and compensation notice

The Provincial Office is responsible for delivering the expropriation and compensation notice to the owner of the property.

1.7.5.1 Method of delivery

If possible, the notice should be hand delivered. If the notice is hand delivered, then a witness should be taken with the person making the hand delivery. In addition, the person accepting delivery should be asked to sign a receipt (Appendix 8). If the notice cannot be hand delivered, then it should be posted by registered post. If the address of the property owner or all of the land owners or any other interested person is not known or hand delivery or delivery by registered post is not possible, then the notice may be published in the *Government Gazette* and once a week during two consecutive weeks in a newspaper circulating in the area in which the property in question is located.

1.7.5.2 The Legal effect of the Notice

The legal effect of the Notice of Expropriation and Compensation is that on the date of expropriation, the ownership of the property vests in the state, released from all mortgage bonds but subject to other registered rights unless and until those rights are expropriated. The state may take possession on, or any time after, the expropriation date, which is 60 days from the date of the notice, or such other date as may be agreed between the Minister and the property owner. The State, after taking possession of the property, may allow the beneficiaries to move onto the land. With transfer, the property will be registered in the name of the beneficiaries.

1.7.5.3 The rights and duties of the land owner

The following are the rights and duties of the land owner, upon receiving the Notice of Expropriation and Compensation.

If a portion of the property is being expropriated or only a certain right in property is being expropriated, the land owner, may, within 30 days of the delivery date of the notice, request, by registered post, the Minister to provide further particulars of such portion or right.

If the property owner does not agree with the amount of and the time and manner of payment of compensation offered, he or she must notify the Minister within 60 days after the delivery date of the notice and attempt to reach an agreement with regard to compensation.

The property owner must notify the Minister if the property, prior to the date of the notice, was leased by unregistered lease or sold by the owner, or is the subject of a builder's lien by virtue of a written building contract.

The property owner must notify the Minister of the address at which further documents in connection with the expropriation may be delivered and posted.

The property owner must deliver or cause to be delivered the title deed of the property to the Minister within 60 days of the delivery date of the notice.

1.7.6 Offers and Payment of compensation

The amount (offer), time and manner of payment of compensation are always offered in the expropriation notice.

1.7.6.1 What if the owner does not accept the offer of compensation

The owner must indicate the amount claimed by him/her as compensation, in a written notice to the Minister. If the Minister does not agree with the amount and sticks to his/her offer of compensation, the Minister must within a reasonable period indicate to the property owner how the amount of the offer was derived at.

The owner must make an application to a court as referred to in section 14(1) of the Expropriation Act, for the determination of the compensation. If he/she fails to make an application to a court within eight months, the amount offered as compensation shall be deemed to be accepted by the owner. A written notice to this effect, by the Minister, must be addressed to the owner, not later than eight months prior to the date contemplated therein. The Minister should also, not later than 60 days before such date by written notice, direct the attention of the owner to the first-mentioned notice.

If the Minister and the property owner have not agreed on the amount and time and manner of payment of compensation within five months of the date of the offer made by the Minister, then the Minister must by written notice to the land owner, direct the property owner's attention to the relevant 10(5) notice in terms of the Expropriation Act. In no event should the written notice be given less 60 days prior to the expiration of the eight month period referred to in the relevant notice.

In the absence of an agreement or deemed agreement in terms of section 10(5) of the Expropriation Act, the amount and time and manner of payment of compensation shall be determined by a court in terms of sections 14, 15 and 18 of the Expropriation Act.

If the property owner or other affected person requests reasons for the expropriation or the determination of the amount and time and manner of payment of compensation, reasons should be given as required by the administrative justice provisions of the Constitution.

1.7.6.2 What if the owner disputes the expropriation as a result of public

interest

If the owner challenges the expropriation in court with regard to public interest, the Director General should decide whether to proceed with the expropriation, or to wait for the outcome of the case. If the Director General decides to proceed, the expropriation can be concluded but the transfer process should not occur until the court has taken a decision. If the challenge is successful, the court will order that the expropriation be reversed.

1.7.6.3 Lease and mortgage holders, builder's lien and contract for sale

1.7.6.3.1 Unregistered lease holders

Unregistered lease holders shall be treated in terms of section 13 of the Expropriation Act. Once the Minister is aware of an unregistered lease, he or she must expropriate that interest in the property in terms of these procedures. If the Minister does not become aware of an unregistered lease prior to the payment of any compensation to the property owner, the state need not pay compensation to the unregistered leaseholder for the extinguishment of the leaseholder's rights.

1.7.6.3.2 Mortgage bonds, builder's lien and contract for sale

If the property is the subject of a registered mortgage bond, builder's lien, or a contract for sale and purchase, the Department must pay the compensation to the relevant persons in terms of such mortgage bonds, builder's lien or contract.

a) Mortgage bonds

It is the Department's responsibility to pay compensation to any holder of any mortgage bonds. This must be determined before the State takes possession of the property. As indicated in 5.7.4, the Provincial Office must do a deeds search, to determine if there are any bonds registered against the property. The amount of the bond should be paid directly to the bondholder, unless it is agreed with the bondholder that the full amount of compensation (including the amount of the bond) should be paid to the property owner.

b) Builder's lien and contract for sale

if the property owner has not informed the Department of a builder's lien or a contract for sale or purchase and as result compensation is not paid in accordance with either the builder's lien or contract, the property owner is liable for compensation to the builder or buyer in terms of section 19(2) of the Expropriation Act.

1.7.6.4 How to request the cheque and effect the payment:

Financial Management has obtained approval from the Auditor General for delegation of powers to the Provincial Directors to provide hand written cheques for land acquisitions. This system should be in place within the next two months. The financial component of the Provincial Office will therefore be responsible to ensure that a cheque for the amount of compensation is available at the date of expropriation. It is recommended that the full amount (100%) is paid to the owner, unless a portion of the property is to be

expropriated. In this case, the owner is only paid 90% of the amount. This amount (90 or 100%) must exclude the amount due to any bond or/and lease holders. The same procedures are applicable if bond or/and lease holders are to be paid.

Until this system is operational, it is the responsibility of the Provincial Office to timely request the cheque for the amount of compensation from Financial Management: Sub Directorate: Accounting. This Sub Directorate cannot be held liable for the late requisition of cheques. The Sub Directorate can provide the provincial office with a hand written cheque within 5 days, if all relevant documentation has been correctly filled in and supplied. The Provincial Office can liaise with the Directorate: Operational Management Support: Marie van Blerk to deposit the cheque directly into the account of the property owner or his/her attorney. The Provincial Office must submit the following documents to Financial Management:

- a) batch header;
- b) 1084 form;
- c) a copy of the signed expropriation notice; and
- d) a letter specifying the amount of payment.

The cheque, made out to the property owner, should exclude any mortgage bonds or builder's lien or contract of sale (of which the Department is aware), registered against the property.

It is very important to specify on your submission that this request is for a Land Transaction (EXPROPRIATION) and that a hand written cheque is required. A red urgent sticker should be attached.

The time of payment as decided on in the expropriation notice must at all times be adhered to, to prevent payment of interest.

Interest on any outstanding amounts will have to be paid and should be calculated and paid as determined in accordance with the provisions of section 12(3) & (4) of the Expropriation Act.

1.7.7 Registration and transfer

Transfer should be effected in terms of the Deeds Registries Act, 1937 and the procedures instituted thereunder, in particular section 31 (and section 32 with regard to servitudes) of the Act.

However, section 9(8)(a) of Act 126 provides that if land is expropriated in terms of any provision of Act 126 other than section 10(1)(d), then sections 17(1) and section 9(2) of the Deeds Registries Act do not apply and that no transfer duty or stamp duty will be payable in respect of the transfer. Section 9(8)(b) of Act 126 provides that if land is expropriated in terms of section 10(1)(d) of Act 126, then no transfer duty or stamp duty will be payable in respect of the transfer. In terms of section 5 of ESTA, no transfer duty shall be payable in respect of any transaction for the acquisition of land which is financed by a subsidy in terms of this section.

Section 10(1)(d) of Act 126 provides that if land is expropriated on behalf of beneficiaries, then it may be transferred directly to the beneficiaries. If the transfer is to be directly to the beneficiaries, it should be done using the same procedure that would have been used if the transfer was to the state. ESTA, does not allow for property to be transferred directly to beneficiaries, but the Act will be amended accordingly.

Immediately after the property has been expropriated, the expropriation must be registered with the Registrar of Deeds. The provincial planner must lodge a copy of the signed expropriation and compensation notice with the Registrar of Deeds.

Depending on the date of expropriation as determined in the expropriation notice, it might be necessary to prepare for transfer of expropriated property in due time. The transfer process should start immediately after the state has taken possession of the property, unless the owner has legally challenged the Department in terms of expropriation for public interest. A conveyancer must be appointed to cancel the mortgage bonds and to effect transfer of property in the deeds office. The following documents must be prepared:

- a) Title deed;
- b) Any other deeds regarding servitudes;
- c) Approved Surveyor General's diagrams;
- d) Certified copy of the expropriation and compensation Notice; and

e) Section 31(4)(a) certificate (As set out in Deeds Act)

Although there is no power of attorney by the registered owner of the land authorising a conveyancer to appear before a Registrar of Deeds, the deed must still be prepared by a conveyancer in accordance with regulation 43 of the Deeds Registries Act. The registrar of deeds executes such deed of transfer without an appearer.

The transfer must be subject to all existing conditions affecting such land and the conveyancer should assist with the incorporation of conditions as certain rights may lapse as a result of merger or otherwise.

1.7.7.1 The section 31(4) certificate:

A certificate, signed by the Department of Land Affairs in accordance with subsection 31(4)(a) of the Deeds Registries Act must be lodged. The certificate contains reference to the expropriation and the provisions of the law whereby ownership of the land involved must be passed to the expropriating authority and is a standard certificate. A special power of attorney, authorising the Provincial Directors to sign such certificate on behalf of the Minister, will be obtained from the State Attorneys office. This power of attorney will be registered by the State Attorneys in all provincial Deeds offices. The certificate must be checked by Legal Services (Jayshree Naidoo).

2. SUPPORTING/ BACKGROUND/ REFERENCE DOCUMENTATION

(a) Aliber, M, 1999, A Proposed guidelines for determining compensation for expropriation

(b) Budlender, G, 1998, The constitutional protection of property rights, in G. Budlender, J. Latsky, and T. Roux, *Juta's New Land Law*, Kenwyn: Juta & Co Ltd.

- (c) Department of Land Affairs, 1997, *White Paper on South African Land Policy*;
- (d) Department of Public Works, Manual on expropriations
- (e) Edward Nathan & Friedland Inc, 1999, ADraft procedures on expropriations
- (f) Fourie, D.R, 1992, *Conveyancing: Practice Guide*, Durban: Butterworths;
- (g) Gildenhuys, A, 1976, *Onteieningsreg*, Durban: Butterworths;
- (h) Legal examples of notices of expropriation;
- (l) Power of Attorney PA 785/88;
- (j) The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
- (k) The Deeds Registry Act, 1937 (act 47 of 1937);
- (l) The Expropriation Act, 1975 (Act 63 of 1975);
- (m) The Extension of Security of Tenure Act, 1997 (Act 62 of 1997); and
- (n) The Provision of Land and Assistance Act, 1993 (Act 126 of 1993)

3. SUMMARY OF RECOMMENDATIONS

It is recommended that:

3.1 Land may be expropriated on behalf of identified beneficiaries in terms of section 12 of Act126/section 26 of ESTA, where the Minister has approved of the subsidies in terms of section 2 or 10 of Act 126/section 4 of ESTA, when:

- (a) no suitable alternative land is available

and

the Department and the property owner cannot agree on the acquisition

(or)

agreement on acquisition but

cannot agree on price;

b) the Department can acquire the land within policy.

3.2 The amount of compensation offered to the property owner must be included in the hearing notice;

3.3 The amount of compensation be determined as set out in 1.7.1.1 and based on a variation of the Gildenhuys formula;

3.4 If only a portion of the land is to be expropriated, the expropriated property should be subdivided before transfer takes place;

3.5 A conveyancer should be appointed to effect transfer and should be paid from the Settlement Planning Grant;

3.6 The procedures as set out in 1.7 be approved;

3.7 The standard notices and documentation as attached be approved;

3.8 That procedures for unidentified beneficiaries be altered accordingly; and

3.9 That procedures for expropriation in terms of The Restitution of Land Rights Act, 1994 and the Land Reform (Labour Tenants) Act, 1996, be submitted by the relevant components.

4. INTENDED IMPACT ON PRIORITY TARGETS: INEQUALITY, POVERTY, WOMEN, ENVIRONMENT

The approved procedures and supporting documentation will ensure that inequalities with regard to land redistribution is addressed. Making land available to landless people through expropriation will alleviate poverty.

5. PROCESS OF INTERNAL APPRAISAL AND EXTERNAL CONSULTATION FOLLOWED TO DATE

Internal consultation took place including Legal Services, Financial Management, State Land Management and consultant Pine Pienaar, KwaZulu Natal provincial office, Restitution Research consultants Mac van der Merwe and HOFFIE Hofman and the Director General. External consultation includes the Deeds Office, Lisa Thornton from Edward Nathan and Friedland Inc, State Attorneys office and the Department of Public Works.

6. INPUT FROM THE RESPONSIBLE POLICY DIRECTOR/S

Supported

7. LEGAL IMPLICATIONS

None

8. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The provincial offices will be required to apply strict measures to the time frames involved in delivering the appropriate notices and memorandums. Legal Services and Financial Management will have to act swiftly to comply with the procedures. It is not sure if the legal capacity exists to comply swiftly with the procedures.

9. FINANCIAL IMPLICATIONS

A valuer must be appointed to determine market value and the amount of compensation. A conveyancer must be appointed to effect registration and transfer of expropriated property. As it is envisaged that the valuer and conveyancer will be paid from the Planning Grant, the provincial offices will be required to budget accordingly. Financial Management will have to attend to the quick release of funds.

10. COMMUNICATION IMPLICATIONS

The Redistribution Directorate will conduct workshops.

11. INFORMATION SYSTEMS IMPLICATIONS

New household beneficiaries should be updated on the national housing database.

12. NATURE OF DEPARTMENTAL DELEGATION/S ARISING

The document assumes that all Provincial Offices will take on the full range of responsibilities and will be fully supported by the responsible National Directorates. The Minister will delegate the authority to sign the section

31(4)(a) certificate to the Provincial Directors. Financial Management should delegate the authority to provide cheques for land transactions to Provincial Directors within the next few months.

13. NATURE OF FURTHER APPROVALS REQUIRED BEFORE IMPLEMENTATION CAN PROCEED (Budget adjustments/ Ministerial approval/ Treasury approval/ Parliamentary sanction)

Approval is needed from the Minister.

LAND REFORM POLICY 48/1999: *POLICY AND PROCEDURES FOR EXPROPRIATION OF LAND IN TERMS OF ACT 126 AND ESTA*

Signed by Minister on 22 March 1999

Appendix 1

Departmental Letterhead

**NOTICE OF RECOMMENDATION OF EXPROPRIATION
AND COMPENSATION**

[Please note that the wording of this document should be altered, as appropriate, to suit the circumstances of each case.]

1. This notice is provided in terms of section 12(2) of the Provision of Land Assistance Act (126 of 1993)/ section 26(2) of the Extension of Security of

Tenure Act (Act 62 of 1997).

2. The Department of Land Affairs will recommend to the Minister of Land Affairs in terms of the Provision of Land and Assistance Act/Extension of Security of Tenure Act that he expropriate the following immovable property together with all improvements thereon and all rights to minerals thereon not already registered in favour of the third person -

[insert legal description of property or right in property]

3. The Department of Land Affairs will also recommend that the Minister of Land Affairs offer the property owner [insert amount of compensation offered] as the amount of compensation for the expropriation in terms of section 10 of Expropriation Act (63 of 1975) and that the time and manner of payment of compensation be made in terms of the Expropriation Act.

4. The justification for the recommendation of expropriation and compensation is attached hereto.

5. The property owner and any other interested persons are entitled to make representations with regard to the expropriation, which representations should be received by the Department of Land Affairs at the address stated below no later than 21 days after the date of this notice.

6. The property owner is required to notify the Department of Land Affairs if any other person has any right or interest in the property not disclosed in the title deed, no later than 21 days after the date of this notice, at the address noted below.

7. The Minister of Land Affairs will consider the recommendations and all representations received, not before 21 days, have lapsed, calculated from the date of this notice, and -

7.1 decide whether to expropriate the property in terms of the Provision of Land and Assistance Act/the Extension of Security of Tenure Act; and

7.2 decide whether to offer [insert amount of compensation offered] as the amount of compensation for the expropriation in terms of section 10 of the Expropriation Act and to pay the compensation in the time and manner provided for in the Expropriation Act.

DIRECTOR GENERAL

Department of Land Affairs

DATE:

Address : Provincial office address

Facsimile No. : Provincial office Fax no

Appendix 2

Departmental Letterhead

JUSTIFICATION FOR RECOMMENDATION OF EXPROPRIATION AND COMPENSATION

[Please note that the circumstances of each case are important. All relevant information, especially information that would indicate whether expropriation of any particular land is in the public interest or for a public purpose, should be included. In addition, the wording of this document should be altered, as appropriate, to suit the circumstances of each case.]

1. Recommendations

1.1 The Department of Land Affairs (ADepartment@) will recommend that the Minister of Land Affairs (Minister) expropriate the following immovable property together with all improvements thereon and all rights to minerals thereon not already registered in favour of a third person -

[insert legal description of property or right in property]

1.2 The Department will also recommend that the Minister offer the property owner [insert recommended amount of compensation] as the amount of compensation for the expropriation and that the time and manner of payment to be as provided for in the Expropriation Act (63 of 1975).

2. The Justification for the Recommended Expropriation

2.1 The recommended expropriation is in terms of section 12 (read with section 10(1)(d)) of the Provision of Land and Assistance Act (126 of 1993)**. It is to acquire land on behalf of persons contemplated in section 10(2) of Act 126/section 4 of ESTA.

** If in terms of ESTA: The recommended expropriation is in terms of section 26 of ESTA.

2.2 [insert description of beneficiary or beneficiaries and explanation to what extent there are persons contemplated in section 10(2) of Act 126/section 4 of ESTA]

2.3 [insert an explanation why the expropriation of this particular land is in the public interest or for a public purpose (the circumstances of this case)]

2.4 The recommended expropriation is in the public interest, as it is both intended to implement and will have the effect of implementing Act 126/ESTA, legislation on land reform which is intended to help bring about equitable access to land and/or security of tenure.

3. The Justification for the Recommended Compensation

Section 12(3) of Act 126/Section 26(3) of ESTA provides that compensation shall be paid as prescribed in the Constitution with due regard to certain provisions of the Expropriation Act. Applying the criteria as required by the Constitution to be applied to the facts of this case and giving due regard to the Expropriation Act, the Department recommends [insert recommended amount of compensation] as the amount of compensation to be offered for the expropriation in terms of section 10 of the Expropriation Act. After consideration of all the relevant facts, the amount of compensation recommended is calculated based on [insert explanation as to what the price is based on].

3.1 The current of use of the property

[insert]

3.2 The history of the acquisition and use of the property

[insert]

3.3 The market value of the property

[insert]

3.4 The extent of direct state investment and subsidy in the acquisition and beneficial capital and improvement of the property

[insert]

3.5 The purpose of the expropriation

The recommended expropriation is intended to implement and will have the effect of implementing Act 126/ESTA.

3.6 Other relevant circumstances, including any stemming from the relevant provisions of Act 126/ESTA

[insert]

Appendix 3



Memorandum

Department of Land Affairs

Departement van Grondsake

Kgoro ya tsa Naga

UMnyango wezoMhlaba

APPROVAL FOR THE RECOMMENDED EXPROPRIATION AND
COMPENSATION OF [PROPERTY DESCRIPTION] IN TERMS OF THE
EXPROPRIATION ACT, 1975 (ACT 63 OF 1975)

Reference Number:

DIRECTOR GENERAL

1. PURPOSE

Provide the purpose of the intended expropriation.

2. BACKGROUND

Give a brief summary on the background of the project, and what led to the intended expropriation of land.

3. JUSTIFICATION

Provide some background as to why the expropriation can be deemed as justified.

4. AMOUNT OF COMPENSATION

Provide a brief summary of the amount of compensation and how it was determined.

5. RECOMMENDATION

It is recommended that the Director General approves:

5.1 The notice of recommendation and compensation which is provided in terms of section 12(2) of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993)/section 26(2) of the Extension of Security of Tenure Act, 1997 (Act 62 of 1997);

5.2 The amount of compensation proposed for the expropriation in terms of section 10 of the Expropriation Act, 1975 (Act 63 of 1975); and

5.3 The justification for the recommendation of expropriation and compensation attached hereto.

** subject to the Minister's approval of the project in terms of section 2 or 10 of Act 126/section 4 of ESTA.

Approved/Amended or

DIRECTOR GENERAL

DATE:

** Delete if project has already been approved prior to the recommended expropriation.

Appendix 4

DEPARTMENT OF LAND AFFAIRS

ROUTE FORM

DIRECTOR GENERAL

Reference:

PDLA Office Reference:

Subject: **APPROVAL FOR THE RECOMMENDATION OF
EXPROPRIATION AND COMPENSATION OF [INSERT PROPERTY
DESCRIPTION]**

Order/ Request:

RANK	SURNAME AND INITIALS	TO DIRECTOR- GENERAL INITIAL/ DATE	FROM DG DATE
-------------	---------------------------------	---	-----------------------------------

DIRECTOR			
LEGAL SERVICES	NAIDOO, J		
CD: REDISTRIBUTION, LAND RIGHTS AND DEVELOPMENT:	STEYN, L		
ASSISTANT PARLIAMENTARY OFFICER	TLADI, R		
DIRECTOR GENERAL	BUDLENDER, G		

Appendix 5



Memorandum

Department of Land Affairs
 Departement van Grondsake
 Kgoro ya tsa Naga
 UMnyango wezoMhlaba

MEMORANDUM RECOMMENDING EXPROPRIATION AND COMPENSATION

Reference:

MINISTER

[Please note that the circumstances of each case are important. All relevant information, especially information that would indicate whether expropriation of any particular land is in the public interest or for a public purpose, should be included. In addition, the wording of this document should be altered, as appropriate, to suit the circumstances of each case.]

1. Purpose

1.1 To recommend that you expropriate the following immovable property together with all improvements thereon and all rights to minerals thereon not already registered in favour of a third person, in terms of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993)/the Extension of Security of Tenure Act, 1997, (Act 62 of 1997)-

[insert legal description property or right in property]

1.2 To recommend [insert recommended amount of compensation] as the amount of compensation to be paid and that the time and manner of payment should be in terms of the Expropriation Act (63 of 1975).

2. The Justification for the Recommended Expropriation

2.1 You have the power to expropriate property in the public interest or for public purposes, for the purposes of Act 126/ESTA.

2.2 The recommended expropriation is in terms of section 10(1)(d) (read with section 12) of Act 126/section 4 (read with section 26) of ESTA. It is to acquire land on behalf of persons contemplated in section 10(2) of Act 126/section 4 of ESTA

2.3 [insert description of beneficiary or beneficiaries and explanation to what extent there are persons contemplated in section 10(2) of Act 126/in section 4 of ESTA]

2.4 The beneficiaries qualify as persons contemplated in section 10(2) of Act 126/in section 4 of ESTA. The recommended expropriation is in the public interest. It is both intended to implement and will have the effect of implementing Act 126/ESTA, legislation on land reform, which is intended to help bring about equitable access to land.

2.5 [insert an explanation why the expropriation of this particular land is in the public interest or for a public purpose (the circumstances of this case)]

2.6 Thus the recommended expropriation is in the public interest because it is intended to implement and will have the effect of implementing Act 126/ESTA, and because the expropriation of the particular property in question is in the public interest.

3. The Hearing

3.1 Section 12(2) of Act 126/Section 26(2) of ESTA provides that the owner of land must be given a hearing before any land is expropriated in terms of the Act.

3.2 A notice that the Minister will consider whether to expropriate and whether to offer the recommended amount and time and manner of payment of compensation, was delivered to the property owner on [insert date of

delivery of the notice]. Attached to the notice was justification for the recommendations. By that notice the property owner was given the opportunity to make representations with regard to the recommendations.

3.3 [insert any other relevant circumstances, including whether the property owner was given additional time to respond to the notice, whether the property owner was given an oral or public hearing and whether any other notice was given to the land owner]

3.4 It is submitted that the hearing given in this case is sufficient.

4. The Justification for the Recommended Compensation

Section 12(3) of Act 126/Section 26(3) of ESTA provides that compensation shall be paid as prescribed in the Constitution with due regard to certain provisions of the Expropriation Act. Applying the criteria as required by the Constitution to be applied to the facts of this case and giving due regard to the Expropriation Act, the Department recommends [insert recommended amount of compensation] as the amount of compensation to be offered for the expropriation in terms of section 10 of the Expropriation Act. After consideration of all the relevant facts, the amount of compensation recommended is calculated based on [insert explanation as to what the price is based on and must show actual calculation].

4.1 The current of use of the property

[insert]

4.2 The history of the acquisition and use of the property

[insert]

4.3 The market value of the property

[insert]

4.4 The extent of direct state investment and subsidy in the acquisition and beneficial capital and improvement of the property

[insert]

4.5 The purpose of the expropriation

The recommended expropriation is intended to implement and will have the effect of implementing Act 126/ESTA.

4.6 Other relevant circumstances, including any stemming from the relevant provisions of Act 126/ESTA.

[insert]

5. Recommendation

It is accordingly recommended that you:

5.1 expropriate the following immovable property together with all improvements thereon and all rights to minerals thereon not already registered in favour of a third person, in terms of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993)/the Extension of Security of Tenure Act, 1997, (Act 62 of 1997) -

[insert legal description property or right in property]

5.2 recommend [insert amount of compensation] as the amount of compensation to be paid and that the time and manner of payment should be in terms the Expropriation Act (63 of 1975).

DIRECTOR GENERAL

DATE:

Recommendations approved/amended or

MINISTER

DATE:

Appendix 6

Departmental Letterhead

NOTICE OF EXPROPRIATION AND COMPENSATION

[Please note that the wording of this document should be altered, as appropriate, to suit the circumstances of each case.]

1. This notice is provided in terms of section 7 of the Expropriation Act (63 of 1975).

2. The Minister of Land Affairs in terms of section 12 of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993)/section 26 of the Extension of Security of Tenure Act, 1997 (Act 62 of 1997) hereby expropriates the following immovable property together with all improvements thereon and all rights to minerals thereon not already registered in favour of a third person -

[insert legal description of property or right in property]

3. The date of expropriation is [insert date of expropriation], from which date the property will vest in [insert name of the state].

4. [Insert amount of compensation] is hereby offered as compensation, the time of manner of payment to be made in terms of the Expropriation Act.

5. You are hereby notified in terms of section 10(5)(a) of the Expropriation Act, that unless you, the owner, agree otherwise with me, you will be deemed to have accepted the offer made to you herein if you fail to make an application to a court referred to in terms of section 14 of the Expropriation Act for the determination of the compensation before [insert a date 8 months from date of notice].

6. Your attention is drawn to the fact that if a lessee has a right by virtue of a lease over the property, and the Minister had no knowledge of that lease on date thereof, the offer of compensation may be withdrawn.

7. Your attention is drawn to the provisions of section 9(1) of the Expropriation Act in terms whereof you shall, within 60 days from the date of this notice, deliver or cause to be delivered a written statement in which the following is set out:

a) Whether or not you accept the compensation offered to you and if you do not accept it, the amount claimed by you as compensation and how much of that amount represents each of the amounts contemplated in sections 12(1)(a)(i)&(ii) or 12(1)(b) of the said Act and how such amounts are made up;

b) full particulars of the following (where applicable):

(i) all improvements on the expropriated property, which in your opinion affect the value of the land;

(ii) if, prior to the notice, the land was let by an unregistered lease, the name and address of the lessee, accompanied by the lease or a certified copy thereof (if it is in writing) or full particulars of the lease (if it is not in writing);

(iii) if, prior to the notice, the land was sold, the name and address of the buyer, accompanied by the agreement of sale or a certified copy thereof; and

(iv) if a building has been erected on the land and such building is subject to a builder's lien by virtue of a written building contract or a certified copy thereof.

8. Your attention is drawn to the provisions of section 12(3)(a)(ii) of the Expropriation Act in terms whereof the amount offered to you and which is payable to you shall during the period of your failure to comply with the provisions of section (9)(1) within the period referred to you in the said section, for the purposes of payment of interest be deemed not to be an outstanding amount.

9. [insert name of owner] must deliver or cause to be delivered to the Minister at [insert address of Minister] within 60 days, from date of this notice -

a) the title deed of the property, or if this is not in your possession or under your control, written particulars of the name and address of the person in whose possession or under whose control it is; and

b) notification of the address at which further documents in connection with this expropriation may be delivered or posted.

MINISTER OF LAND AFFAIRS

PLACE:

DATE:

Annexure 7

DEPARTMENT OF LAND AFFAIRS

ROUTE FORM

MINISTRY OF LAND AFFAIRS

MINISTER D A HANEKOM

Ministerial Reference:

PDLA Office Reference:

Subject: EXPROPRIATION AND COMPENSATION OF [INSERT PROPERTY DESCRIPTION] ON BEHALF OF THE [INSERT BENEFICIARY GROUP]

Order/ Request:

RANK	SURNAME AND INITIALS	TO MINISTER INITIAL/ DATE	FROM MINISTER DATE
PLANNER			
DEPUTY DIRECTOR			
DIRECTOR			
DDG: IMPLEMENTATION: S.A.O.	GROSSBERG, N		
DDG: IMPLEMENTATION	CLOETE, M	SKIP	CPD
LEGAL SERVICES	NAIDOO, J		
ASSISTANT PARLIAMENTARY OFFICER	TLADI, R		
DIRECTOR GENERAL	BUDLENDER, G		
ASST ADMIN SECRETARY	VAN STADEN, C		
MINISTER	HANEKOM, D		

Appendix 8 Example of receipt to be signed by property owner

This example is relevant for the Notice of Recommendation of Expropriation and Compensation and the Notice of Expropriation and Compensation.

I, [insert name of property owner], the undersigned, hereby acknowledge receipt of the Notice [of Recommendation] of Expropriation and Compensation [and the attached Justification for Recommendation of Expropriation and Compensation] with regard to [insert legal description of property].

NAME OF PROPERTY OWNER

DATE :

Appendix 9



Memorandum

Department of Land Affairs

Departement van Grondsake

Kgoro ya tsa NagaUMnyango wezoMhlaba

PROPOSED GUIDELINES FOR DETERMINING COMPENSATION FOR EXPROPRIATED PROPERTIES

1. Background

The purpose of this memorandum is to propose some conceptual guidelines for the determination of compensation in expropriation cases. The memo proposes a variation on the Gildenhuis formula, and makes specific suggestions as to how to determine present values of past subsidies. The proposed methodology is directed specifically at compensation for the loss of one's property, and not for other losses the expropriatee may incur. Also, the memo does *not* discuss how to estimate market values, still less how to estimate historical market values. Nor does it consider compensation to victims of forced removals in terms of restitution.

2. The Expropriation Act and the Constitution

Prior to the adoption of the new Constitution in 1996, compensation for expropriation was guided solely by the Expropriation Act, No. 63 of 1975,

together with a number of court decisions based on the Act. In short, Section 12 of the Act establishes that the *maximum* compensation for expropriated properties should be the sum of the amount which the property would have realized if sold on the date of notice in the open market by a willing seller to a willing buyer, plus an amount to make good any actual financial loss caused by the expropriation. However, added to this maximum compensation was a solatium, an amount of money roughly proportional to the sum determined above, to compensate the expropriatee for the disturbance or nuisance of being expropriated.

Where there is no open market for the expropriated property in question, the Act loosely provides for either the depreciated cost method, or any other suitable manner.

The Constitution, Section 25(3), on the other hand, introduces numerous other considerations, but in a terribly vague manner:

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.

There are essentially two issues to be addressed. First, what is the status of Section 12 of the Expropriation Act in light of this section of the Constitution? And second, how does one interpret this section of the Constitution when it comes to the practical business of determining compensation?

In terms of the first question, there are at least two views. One view is that determination of compensation should be informed by *both* the Act and the Constitution (e.g. Fitchet *et al.* in their valuation of Cato Manor). A second view is that the Act can be effectively ignored in favour of the Constitution. We accept this second view, noting that the Act only substantively differs from the Constitution in making specific provision for Actual financial loss[@], and for the solatium. We avoid some of the implied debate by restricting ourselves to proposing a methodology for determining the compensation for the property, and leave for others the question of financial loss and the solatium.

The second question, as to the interpretation of 25(3) of the Constitution, is more tricky. It is difficult, specifically, to pin down the practical import of factors (a), (b) and (e), and also what other factors might be relevant, since this list is not meant to be exhaustive. Omitting (a), (b) and (e) leaves only (c), market value, and (d), state investment and subsidies. When market value cannot, for some reason, be estimated, then presumably some proxy can be used; this perhaps could be subsumed within the meaning of (a), the current use of the property (cf productive value method), or (b) the history of acquisition and use of the property (cf depreciated cost method).

Where market value can be estimated, i.e. through the comparable sales method, then we propose that, in terms of 25(3), compensation for expropriated properties be determined as **market value adjusted for the present value of past subsidies**. This is elaborated upon in the following sections.

3. Valuation for Compensation

This section starts by looking at one proposal for a compensation formula - the Gildenhuis formula - and then makes adjustments to that formula as necessary. Sub-section 3.2 proposes an alternative for valuing past property acquisition subsidies. Sub-section 3.3 reverts to a general question about how to determine present values of past subsidies, while sub-sections 3.4 and 3.5 return to look at specific questions of infrastructure subsidies and interest rate subsidies, respectively. Sub-section 3.6 summarizes.

3.1 Basics - The Gildenhuis Formula

Market value adjusted for the present value of past subsidies is the essence behind the so-called Gildenhuis formula. The Gildenhuis formula is as follows:

$$\text{Compensation} = C - k_0 \cdot (B - A) - E_1 \cdot k_1 - E_2 \cdot k_2 - E_3 \cdot k_3 \dots,$$

where

A is the actual price paid at the time of acquisition,

B is the market value of the property at the time of acquisition,

C is the present day market value of the property,

D is the value of improvements made to the property since acquisition, and

E is the value, in today's terms, of any special benefits which the owner received from the state.

The ratio A/B measures the degree of acquisition subsidy enjoyed by the expropriatee at the time the property was bought - the lower the value of the ratio, the greater the subsidy. Multiplying this ratio by C, the present (estimated) market value of the property, has the effect of >penalizing= the expropriatee for the degree of subsidy he enjoyed in terms of land acquisition. This reflects factor (d) in 25(3) of the Constitution, which requires the compensation to take into account the extent of direct state investment and subsidy in the acquisition...of the property. The greater the acquisition subsidy, the smaller the value of the fraction, and thus the smaller the share the expropriatee is compensated for the present market value of his property.

The purpose of including D is to ensure that the expropriatee is compensated for beneficial improvements made to the property. It would seem, however, that this is double-counting, in the sense that truly beneficial improvements should already be reflected (capitalized) into the present-day market value of the property, C. Thus term D will hereafter be omitted.

Term E is included so as to allow for the deduction of subsidies the expropriatee may have enjoyed from the state. Again in keeping with factor (d) in 25(3) of the Constitution, these will hereafter be identified as the extent of direct state investment and subsidy in the...beneficial capital improvement of the property. That is, no attempt will be made to assess the value of *other* subsidies the expropriatee may have enjoyed, such as output price subsidies, transport subsidies, etc. However, the value of past interest rate subsidies on loans for land acquisition will be included, on the grounds that these facilitated the acquisition of the property in the first place. This leaves open the question about whether interest rate subsidies for acquisition of machinery and stock should also be included. We propose that these be omitted on the grounds that they were generally of far less significance than interest rate subsidies on land.

3.2 Valuing past property acquisition subsidies

As shown above, Gildenhuis' formula adjusts the present market value of the property by multiplying it by the ratio of actual purchase price to historical market value: $(A/B/C)$. To understand this better, note that another way of attempting the same thing would have been to calculate $B-A$ as the value of the subsidy at the date of acquisition, and then translating the value of this past subsidy into today's terms by adjusting for, say, inflation. If k represents this inflation factor, then $k(B-A)$ is the value of the property acquisition subsidy in today's terms, so that the compensation due would be $C - k(B-A)$. What is the difference between this approach and that in the Gildenhuis formula?

The key lies in understanding in what manner one would wish to adjust for inflation. One could, for example, use the consumer price index (cpi). Alternatively, one could use some measure of the inflation of land prices. A measure close at hand is simply C/B , that is, the ratio of today's market price relative to the (true) market price at the time of acquisition, for the property in question. In other words, if we substitute C/B for k , then that is, as in the Gildenhuis formula. In other words, the term $(A/B/C)$ in the Gildenhuis formula is equivalent to our more general expression $[C - k(B-A)]$, *provided the value of the past property acquisition subsidy is translated into today's terms according to the degree of appreciation of the particular property in question.*

This is not an unreasonable formulation, but in certain respects it is highly undesirable. The most serious problem is that it means that the value we attribute to the past land acquisition subsidy depends upon the rate of land value appreciation of that *particular property only*. Consider two adjacent farms purchased for the same price in 1980, with identical acquisition subsidies. Suppose one of these owners took very good care of the

land, and the other did not, such that the present market value of the first property is considerably higher than that of the second. Now suppose that both are to be expropriated. Despite the fact that in 1980 each farmer received the same subsidy, according to the logic of the Gildenhuys formula, the *present* value of the subsidy for the first farmer is greater than that of the *present* value of the subsidy for the second farmer, strictly because her land value appreciated by more. She will still be compensated more on account of having a higher market value today, but will be *over-penalized* for the subsidy due to the high appreciation of her land value, whereas the second owner will be *under-penalized*. Therefore, a preferable approach would be to adjust for value changes over time in a more general and fair way. In other words, we propose $C - k(B-A)$, where k is the same for both farms. The question is, what should k be? Obviously, k should vary according to the lapse in time in question, but should it also vary so as to reflect different farm types or agro-climatic zones? Should it even be defined in terms of land value appreciation? This question of k is addressed in Section 3.3.

3.3 Reckoning a past value in today's Rand

The previous sub-section argued that a past value or subsidy must be reckoned in today's terms in a manner that does not depend on *a particular property*. Still, several possibilities suggest themselves, mainly concerning different indices that record price movements over time. For example:

- \$ the general land price index
- \$ land price indices that relate to different geographical regions
- \$ land price indices that relate to different farm types
- \$ the producer price index for the agricultural sector
- \$ the multi-sectoral producer price index
- \$ the consumer price index
- \$ the rate of return on capital
- \$ the yield on government bonds
- \$ the average rate of return on land in the agricultural sector

Note that the first 6 of these are readily available in the *Abstract of Agricultural Statistics*, while the rate of return on capital and yield on bonds can be taken from, say, the Reserve Bank's annual reports, and the average return on land is reported in various academic articles, e.g. Nieuwoudt (1987).

One could construe a principled rationale for any of the possibilities listed above, as well as for many not listed. For instance, the logic of using some sort of land index is that, where the subsidy was applied to land acquisition, the land index would capture the increment in wealth in land made possible by that subsidy due to the general appreciation of land. One could base the choice of the rate of return on land on a similar rationale, in that the subsidy made possible acquisition of land which provided a stream of additional income. On the other hand, one could argue that the effect of the land acquisition subsidy was to enable the beneficiary to afford the purchase of other things, e.g. consumer goods, so that the consumer price index should be used. Still another rationale could be advanced in favour of the rate of return on capital, say government bonds: subsidies given by government increased the government's net borrowing position, the cost of which could be measured in terms of the yield on government treasury bonds.

Similarly, counter-arguments can be summoned against each of these proposals. A particular problem with those proposals having to do with yields and returns is that, because they involve the accumulation of value through annual compounding, they lead to a very high assessment of the present value of past subsidies. In some cases, especially if the land acquisition subsidy was made many years ago, it turns out that the value of the property after subtracting the present value of the subsidy, is close to zero. This is probably too severe. On the other hand, using any of the land price indices means that the present value of the subsidy is being gauged according to price trends that are specific to the agricultural sector. This seems quite divorced from what the value of the subsidy was at the time it was initially granted.

For these reasons, the principle we espouse is that in reckoning a value of past land acquisition subsidies in today=s terms, we simply use the consumer price index, as the best all-around measure of the erosion of buying power of money over time. It is not a perfect instrument to our needs (we claim there is none), but it captures the essential idea that we wish to translate the value of a past subsidy into today=s rand, without undue concern for how that subsidy was employed or even in what sector.

Taking our simple formula $C - k(B - A)$, we then define k as i_T/i_0 , where i_T is the value of the cpi in the year of expropriation, and i_0 is the value of the cpi in the year in which the property acquisition subsidy was given. A similar approach will be proposed for the other two types of past subsidies.

3.4 Valuing past infrastructure subsidies

In light of the above, valuing a past infrastructure subsidy is fairly simple. Consider the case of a past fencing subsidy from the Department of Agriculture. Most of these subsidies involved the Department of Agriculture contributing a percentage of the erection costs, e.g. 25%. Suppose, for example, a farmer spent R5 000 on fencing his land in 1985. Of this, the subsidy element was 25%, or R1 250. The cpi in 1985 was 32.9,

while in 1998, it was around 117.0, so $i_T/i_0 = 117.0/32.9 = 3.56 = k$. The value of the subsidy in 1998 rand is therefore $3.56 \times 1\,250 = R4\,450$.

A pertinent question here, however, is whether or not the fence erected in 1985 is still of much value. It could be, for example, that little remains of this fence, or that it is in disrepair, so that it cannot be said that the fence presently constitutes a beneficial capital improvement. As such, the next owner may have to invest in fencing all over again, in which case it cannot be said that the fencing subsidy has been capitalized into the market value of the property. Therefore, the argument goes, the present value of the fencing subsidy should not be subtracted.

A counter-argument is that, the present condition of the fence notwithstanding, the land owner's stream of benefits was positively affected by the subsidy, not to mention his cash-flow at the time the subsidy was granted. Moreover, it could be that the poor condition of the fence (or whatever other piece of subsidized infrastructure) today is due to the owner's own negligence. In short, having to adjust for the present condition of the subsidized infrastructure, and then determining the reasons for its condition, would impose too great a burden on the valuer. In light of the fact that no attempt is made to penalize expropriatees for the plethora of other subsidies they may have enjoyed, the adjustment for these infrastructure subsidies seems just and equitable, and none too onerous.

3.5 Valuing past interest rate subsidies

The determination of the present value of interest rate subsidies is based upon the same principles. For sake of clarity, we present an example from the valuation of a portion of a farm called Putfontein. A 25 year loan was taken out in 1981 for the purchase of portion 39, to an amount of R159 814. The interest rate was 5% per annum, versus an average market rate of around 15%. The valuer did the following. He calculated all of the interest paid at 5% from 1982 through 1997 (for the last 3 years, the interest rate was increased), then summed it up over these 16 years. This sum was R121 626. He then did likewise under the assumption that the interest rate was 15%, and found a sum of R347 350. He then calculated the difference, R225 724, as the value of the interest rate subsidy.

The problem with this is that the valuer is summing across benefits that accrued at different points in time, as though they all occurred today. Rather, one should find the value of the subsidy for 1982, and then find the present value of that subsidy today; then likewise for 1983, etc. This is what we do below, again using the cpi to translate past values into today's rand:

	Interest paid at 5%	Interest pay- able at 15%	Difference	cpi	cpi factors	Present values

1982	7 990	23 972	15 981	19.7	6.5	104 569
1983	7 823	23 859	16 036	22.2	5.8	93 111
1984	7 647	23 730	16 082	24.7	5.2	83 928
1985	7 462	23 581	16 118	28.8	4.5	72 139
1986	7 269	23 410	16 140	34.1	3.8	61 012
1987	7 065	23 213	16 147	39.6	3.3	52 559
1988	6 852	22 986	16 134	44.7	2.9	46 525
1989	6 628	22 725	16 098	51.3	2.5	40 449
1990	6 392	22 426	16 034	58.6	2.2	35 269
1991	6 145	22 081	15 937	67.6	1.9	30 388
1992	5 885	21 685	15 800	77.0	1.7	26 450
1993	5 612	21 229	15 617	84.5	1.5	23 823
1994	5 326	20 705	15 379	92.0	1.4	21 548
1995	8 040	20 102	12 062	100.0	1.3	15 548
1996	13 187	19 409	6 222	107.0	1.2	7 496
1997	12 302	12 238	(64)	116.6	1.1	(70)
Sept.1998				128.9	1.0	
sum	121 626	347 350				714 742

Note that now the valuation of the interest rate subsidy is R714 742, almost three times as large as when failing to take inflation into account. The main modification to this would be to use actual market interest rates, rather than just some average. However,

here some distinctions must be made. In the example above, the loan seems to have been taken out from the Agricultural Credit Board (ACB). The question is, what interest rate would the farmer have been paying if subsidized loans from the ACB had not been available? As most farmers' mortgages are held by the Land and Agriculture Bank, the relevant interest rate for sake of comparison might appear to be those of the latter. However, for much of the 1970s and 1980s, the Land Bank's loans were also subsidized, though to a lesser extent than the ACB's. The alternative is to interest rates among commercial banks that also provide mortgage finance to the agricultural sector (e.g. Standard Bank). However, commercial banks are often considered a last resort among farmers where mortgage finance is concerned, even though they provide over half of all short term credit to the agricultural sector. Provisionally, we propose to use commercial mortgage rates as the basis of comparison.

3.6 Summary

To summarize, we recommend:

\$ Compensation to expropriatees for their expropriated properties should take into account market value (c) and certain past subsidies (e), but not the current use of the property (a), the history of acquisition and use of the property (b), nor the purpose of the expropriation (e). This leaves as an open question whether expropriatees should also be compensated for additional financial losses, and whether they should be awarded solatia.

\$ Subsidies to be deducted can be of three types: property acquisition subsidies, infrastructure subsidies, and interest rate subsidies. The present value of subsidies should be established by adjusting according to the consumer price index (cpi). The cpi is included in Appendix 1.

\$ Infrastructure subsidies to be included are mainly fencing subsidies. The present condition of this infrastructure need not be taken into account.

\$ Interest rate subsidies should be on long term mortgage loans for property purchase, and not on medium term loans for machinery, etc. The degree of

the subsidy should be assessed relative to commercial mortgage interest rates. Present values of interest rate subsidies must be determined on a year-by-year basis, as demonstrated in the examples provided. Reference commercial sector interest rates on mortgage loans are provided in Appendix 1.

\$ The general formula for determining compensation in the context of expropriation is the following variation on the Gildenhuys formula:

●

$$\text{Compensation} = C - k_0 \cdot (B - A) - E_1 \cdot k_1 - E_2 \cdot k_2 - E_3 \cdot k_3 \dots,$$

where

C is the present day market value of the property,

k_0 is the inflation factor related to land acquisition, based on the cpi

B is the market value of the property at the time of acquisition,

A is the actual price paid at the time of acquisition,

E_1, E_2, E_3 , etc., are the historical values of infrastructure and interest rate subsidies received, and

k_1, k_2, k_3 , etc., are the corresponding inflation factors for these subsidies, based on the

cpi.

An example of the application of this formula is provided in Appendix 2.

Appendix 1 - Cpi and Commercial Mortgage Interest Rates

year	cpi (base 1995=100)	predominant interest rates on commercial mortgage loans (%)
1960	4.1	6.5
1961	4.2	7.0
1962	4.3	5.5
1963	4.3	5.5
1964	4.4	5.8
1965	4.6	7.2
1966	4.8	8.0
1967	4.9	8.5
1968	5.0	8.5
1969	5.2	8.5
1970	5.4	8.7
1971	5.7	9.0
1972	6.1	9.0
1973	6.7	8.7
1974	7.5	10.0
1975	8.5	10.9
1976	9.4	12.0

1977	10.5	12.0
1978	11.6	12.0
1979	13.1	11.6
1980	14.9	11.0
1981	17.2	13.3
1982	19.7	15.7
1983	22.2	16.7
1984	24.7	19.3
1985	28.8	20.3
1986	34.1	16.6
1987	39.6	14.0
1988	44.7	14.7
1989	51.3	19.4
1990	58.6	20.7
1991	67.6	20.0
1992	77.0	18.3
1993	84.5	16.0
1994	92.0	15.5
1995	100.0	17.6

1996	107.4	19.0
1997	116.6	19.8
1998	123.6	20.5

Note that the base year upon which a cpi is built is arbitrary; if another year is chosen, another cpi results. However, the choice of which cpi to use ultimately does not matter, as each cpi maintains the same proportionate change in price levels between any two given years. Likewise, it does not matter whether the cpi is defined such that in the base year, the index equals 1 or 100; again, the proportions (ratios) are unaffected.

For 1970 through 1998, the cpi reported here is that published by Statistics South Africa (formerly Central Statistical Services); for 1960 through 1969, the cpi is taken from the IMF's *International Financial Statistics*, and spliced to match the 1995=100 base.

The data on mortgage lending rates were provided by the South African Reserve Bank's Capital Markets Section. This is an average of rates applied by commercial banks on mortgage loans for housing, and thus does not relate specifically to the agricultural sector.

Appendix 2 - Example of Applying Formula for Determination of Compensation

The following example is fiction made up of ingredients of various actual cases.

Essential facts

In late 1998, an independent valuer estimated the fair market value of Tara Farm at R3.35 million, including improvements, excluding machinery and other moveable assets. Ms O'Hara purchased Tara Farm in 1965. Estimated market value was R160 000, but Ms O'Hara paid R112 000. In order to make the purchase, Ms O'Hara took out a 25 year loan with the Agricultural Credit Board (ACB), on which the interest rate was 5% per annum from 1966 through 1990. A 25% fencing subsidy was obtained in 1970, and again in 1976. In 1970, the expenditure on fencing was R4 000, of which the Department of

Agriculture Contributed R1 000. In 1976, another R3 000 was received, implying a subsidy component of R750.

Acquisition subsidy

The value of the acquisition subsidy in 1965 was $160\ 000 - 112\ 000 = 48\ 000$. We translate this into today's terms by noting that the value of the cpi in 1965 was 4.6, and in 1998, 123.6, implying that between 1965 and today, the general price level has increased by a factor of $123.6 \div 4.6 = 26.87$. Therefore, the value of the 1965 subsidy in today's terms is $48\ 000 \times 26.87 = R1\ 289\ 760$.

Infrastructure subsidy

The value of the cpi in 1970 and 1976 are 5.4 and 9.4, respectively. This implies that, since 1970, prices have increased by a factor of $123.6 \div 5.4 = 22.89$, and since 1976, by a factor of $123.6 \div 9.4 = 13.15$. The value of the fencing subsidy for 1970 is therefore $22.89 \times 1\ 000 = R22\ 890$, while that for 1976 is $13.15 \times 750 = R9\ 862$. The total value of the fencing subsidy is therefore $R22\ 890 + R9\ 862 = R32\ 752$.

Interest rate subsidy

Last but not least, the interest rate subsidy is calculated by means of finding the difference between the interest actually paid and what would have been paid if commercial rates had applied. This is done for each year, and the difference per year is then translated into a present value by means of the corresponding cpi factor. To find the interest payments in the first place requires working out on a spreadsheet, adjusting the annual repayments so as to pay off the loan in the prescribed period.

	Interest paid	Interest payable	Difference	cpi	cpi	Present
	at 5%	at comm. rates			factors	values
1965						

1966	5 600	8 960	3 360	4.76	12.30	41 324
1967	5 483	9 251	3 769	4.93	11.90	44 832
1968	5 360	9 007	3 648	5.03	11.65	42 501
1969	5 230	8 742	3 512	5.19	11.29	39 652
1970	5 094	8 621	3 527	5.40	10.85	38 270
1971	4 952	8 637	3 686	5.70	10.28	37 891
1972	4 802	8 324	3 522	6.10	9.61	33 832
1973	4 645	7 686	3 041	6.70	8.75	26 601
1974	4 480	8 408	3 928	7.50	7.81	30 690
1975	4 307	8 759	4 452	8.50	6.89	30 693
1976	4 125	9 261	5 137	9.40	6.23	32 021
1977	3 934	8 918	4 984	10.50	5.58	27 817
1978	3 733	8 533	4 800	11.60	5.05	24 250
1979	3 522	7 849	4 327	13.10	4.47	19 357
1980	3 301	6 984	3 683	14.90	3.93	14 484
1981	3 069	7 724	4 655	17.20	3.41	15 860
1982	2 825	8 415	5 590	19.70	2.97	16 629
1983	2 569	8 334	5 766	22.20	2.64	15 219
1984	2 300	8 926	6 626	24.70	2.37	15 720
1985	2 018	8 757	6 739	28.80	2.03	13 713
1986	1 721	6 577	4 855	34.10	1.72	8 344
1987	1 410	4 776	3 366	39.60	1.48	4 981
1988	1 083	3 926	2 842	44.70	1.31	3 726

1989	740	3 602	2 862	51.30	1.14	3 269
1990	380	2 086	1 706	58.60	1.00	1 706
sum						583 380

Putting it together

Putting these pieces together, the compensation due to the expropriatee for the property is:

3 350 000
- 1 289 760
- 32 752
<u>- 583 380</u>
1 444 108

or R1.44 million.