Let’s not bump heads over expropriation

by Motsepe Matlala, President of NAFU SA

South Africa faces the cruel choice between economic growth and social justice. The choice has to be balanced through political interventions played by the current African National Congress government. In debating the question of expropriation, we view it as a process of negotiation instigated by government between those who possess land derived from historical privileges, and the majority who view such land as having been unfairly taken away from them.

The bottom line in political terms is that there are the majority blacks who want and expect land to be taken from the minority, who are largely white. NAFU SA wishes this issue to be resolved in a peaceful manner. We argue for a peaceful process, because as the injured party, we are conscious that taking the country back to a primitive history of illegal forceful dispossession, will not heal South Africa nor contribute to the prosperity that we so desire.

In fact, as the farmers’ organisation representing most of the historically disadvantaged people, we feel that an open, honest discussion of the issue of expropriation for public purpose and interest will not only heal our country, but contribute to economic progress for all. Since the new democratic dispensation, the South African government has been gradually acquiring land from the market and redistributing it to the needy and “competent” through two programmes – land redistribution and restitution. These programmes also run in tandem with the implementation of tenure reforms, especially in communal areas.

NAFU SA feels that the issue of property rights or misplaced rights, needs to be discussed once and for all. Once an agreement is reached, we should move on with the job of ensuring land transfers and appropriate compensation to those whose property is acquired. Postponing this issue is not good for our country. Our people and foreign investors desire to see this issue resolved in a peaceful, logical and systematic fashion to grow our economy, people and country.

Origins of the Bill

A call for serious action was expressed in the “Apex of Priority List” of President Mbeki’s 2008 state of the nation address. The Minister of Agriculture and Land Affairs has announced that five million hectares will be acquired next year, as part of meeting the 30% agricultural land delivery to 10,000 blacks by 2014. Together with this optimism, the government is in action with tabling the Expropriation Bill and regulations of foreign land ownership as part of finalising claims by the end of 2008.

The short history of the democratic South Africa demonstrates that it has been unable to address the land issue due to the property clause and a host of other issues such as...
lack of resources, untransformed bureaucracy, lack of technical ability, ineptitude in government and resistance by land owners. The Expropriation Bill is thus a first serious attempt at moving the constitutional provisions forward.

The basic elements of the Expropriation Bill are:

- **Equity** in the way the land is owned by different racial groups in South Africa
- **Equality**: Redress specific racially-based imbalances in recognised land rights and access to land, as well as reverse the current inequitably founded systems of land tenure and land administration
- **Legal institutions**: Existing legal framework and institutions for managing land conflict or dispute resolution, which tend to protect those with disproportionate property derived from past expropriation, rather than the victims of same, need to be reformed
- **Social justice**: That takes into consideration that there are differences in class, capabilities and talents to use the land.

In South Africa the idea of a negotiated, planned and orderly land redistribution programme based primarily on market-related land purchases, does not deliver on land reform. State power and force via the proposed Expropriation Bill, is critical for the negotiation of the land acquisition process. Indeed there is a sense in which this approach may force land owners to see the seriousness with which the state is regarding this issue.

**Our expectations**
A law authorising compulsory acquisition, must require the acquiring authority to give notice of its intention to acquire the land, to the owner and any person having an interest therein. Where the acquisition is contested, the enabling law must allow the person contesting, to challenge the acquisition in the courts and must further oblige the acquiring authority to seek a court order authorising or confirming the acquisition. It is incumbent upon the expropriating authority to do a thorough assessment of the property to be acquired. One of the critical elements of expropriation is that it must not be a constant feature in the land administration system. Farmers and producers must have confidence in the tenurial systems that emerges from expropriation. It is in the interest of all farmers and investors to have the land question solved. This helps them to make long term planning with the confidence that their land will not be subjected to expropriation in future.

**Learning from others**
Countries that have undergone land reforms, have achieved stability. In other words, mass expropriation must be done once and for all, followed by timely land planning and stability in tenure arrangements that the society agrees to. In this way expropriation will not be a key feature in agricultural and societal progress.

Countries in Asia and Latin America that used expropriation, have reached stages of tenure maturity to the extent that expropriation becomes redundant on its own. This is the framework that provides confidence to investors that South Africa currently fears will run away, once expropriation is introduced.

The Ministry of Public Works has come up with a critical piece of policy that needs to be supported, because this is the first time that we are making further interpretation of the constitutional provision with regard to property in South Africa. This process, if taken to its logical conclusion, will provide the country with an angle through which the land redistribution issue can be tackled.

The Expropriation Bill has the potential to increase public debate and policy design on land reforms towards focusing the negotiations between state and land owners, over concrete actions to deliver more land for redistribution. Thus a model of land acquisition negotiations based upon a policy that has the option of expropriating land, provides the best scope for speeding up land transfers in South Africa.