



**Submission to the
Portfolio Committee on
Public Works**

on the

**EXPROPRIATION BILL
(B 4 – 2015)**

7th May 2015

1. Introduction

The Catholic Parliamentary Liaison Office of the Southern African Catholic Bishops' Conference welcomes the opportunity to comment on this legislation. The stated aim of the Bill to “provide a common unified framework to guide the process and procedures for the expropriation of property by all expropriation authorities and organs of state”, “in the public interest, subject to just and equitable compensation”, “with due respect for the rights of everyone” (Portfolio Committee on Public Works), reflects a reasonable and rational response to the challenges of procuring resources for the implementation of policies for the public good.

The Catholic Church holds to the principle of the *universal destiny of all goods* and thus, though private property must be respected at all times, and there can be no arbitrary dispossession of property, all forms of property ownership exist within a context where “the right to private property must never be exercised to the detriment of the common good” (Pope Paul VI, *Populorum Progressio*, #23).

We believe that the proposed legislation will, for the most part, enhance the ability and capacity of the state to secure property necessary for the implementation of just and fair policies for the public good; however, we also have some reservations about the proposed changes. We detail our below the clauses which we support as well as those about which we have concerns.

2. Specific points

2.1. Clause 2: Application of the Act

We strongly endorse the principle that expropriations should take place only for a public purpose or in the public interest. We note, however, that the definition of ‘public purpose’ is an extremely wide one: “any purposes connected with ... the provisions of any law by an organ of state”. It is important to emphasise that expropriation – which is in effect a drastic limitation of the right to ownership of property – should be a last resort; it should not be undertaken for reasons of convenience or when other, less intrusive options are available.

2.2. Clause 5: Investigation and gathering of information for purposes of expropriation

Disputes over expropriation are usually due to disagreements about the value of the property concerned. One of the easiest and most efficient ways of determining the value of a property (land or land plus

improvements) that is to be expropriated, is to ascertain the municipal valuation of that property in terms of section 46 of the Local Government: Municipal Rates Act *** . Municipal valuations are determined by the State (in the form of municipalities). It would be anomalous – and, we suggest, unfair – if another branch of the State (the expropriating authority) were to arrive at a valuation lower than the municipal valuation. This would have the effect that a property owner would have been paying rates on a value higher than that for which he or she is to receive compensation. We suggest, therefore, that the following be inserted after clause 5(1)(b):

“(c) the current municipal rates valuation, if any, of such property”;

and that the following be inserted in clause 7(6)(b) after the words “expropriating authority”:

“which amount shall not be lower than the current municipal rates valuation, if any, of the property,”

The effect of these two insertions would be to ensure that no-one was given compensation by the State in a lower amount than that on which he or she had been paying rates to the State. Furthermore, it would mean that property owners would know beforehand that the valuation of property was an independent process and not one that was determined by the party that was to benefit from the expropriation.

2.3. Clause 15: Offers of Compensation: Legal Redress

Clause 15(3) effectively gives a claimant 60 days in which to institute legal proceedings; this implies that the only way to legally object to the offer of compensation is to go to court for relief. For many people, the costs involved in a legal action are such that it becomes prohibitive. Poorly-educated and disadvantaged people, those living in far-flung rural areas, and those who, for whatever reason, lack access to legal advice, will be placed at a significant disadvantage by this provision.

We suggest that the Act should make provision for an accessible and affordable mechanism, along the lines of the CCMA in labour disputes, or the various independent ombudsmen that exist for the professions, which could mediate and/or arbitrate in such disputes. It would be beneficial to all, but especially to the poor, if there was such a process or tribunal that would act as a bridge between the courts and the Minister’s authority the valuing authority in the matter of expropriation and compensation.

2.4. Time periods

Various clauses refer to time periods within which owners of property selected for expropriation are required to submit documents, lodge objections, etc. As already noted, expropriation is a drastic inroad in to the right to property; in addition, it will often be a matter of some complexity for an owner to prepare submissions and objections relating to an expropriation. It may be necessary for him or her to consult lawyers, financial advisers, estate agents, and so on. While a well-resourced or wealthy owner may well be able to mount an objection within a month, this will not be the case for owners who are not familiar with legal and other processes, or who lack the money to consult with professional advisers. We submit that a period of 30 days, as contemplated for example in clause 7(2)(e) and (f) and 7(4), is too short and that it would effectively discriminate against poor or unsophisticated owners. The same applies to the 20-day period contemplated in clause 14(1). The fact that clause 25 empowers the expropriating authority to extend these time periods “on good cause shown” and upon application in writing, does not, we submit, remedy the harm that may be caused to disadvantaged owners; they may, indeed, not even be aware of the possibility of such an extension. It would be far better to provide for more realistic time periods in the first place.

3. Conclusion

We wish the Committee well in its deliberations, and we would be happy to make an oral presentation.

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