

Limpopo Legislature

OFFICE OF THE SECRETARY

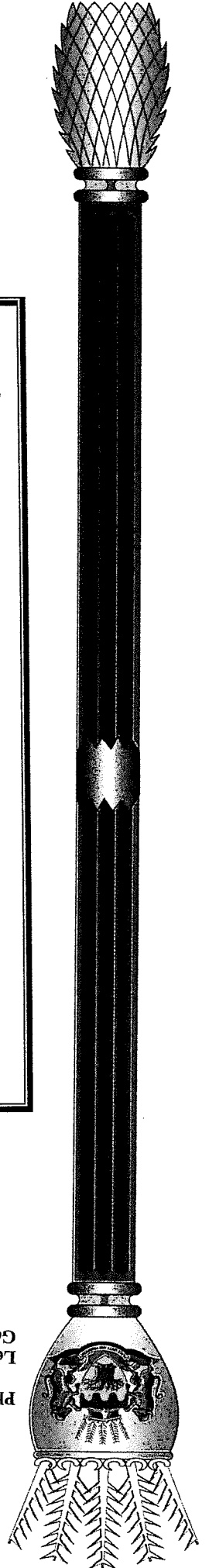
Postal Address:
 Private Bag X9309
 Polokwane
 0700

Physical Address:
 Lebowakgomo
 Government Complex

NEGOTIATING MANDATE

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| To | : | The Chairperson: SC on Economic and Business Development |
| Name of Bill | : | Expropriation Bill |
| Number of the Bill | : | [B4B - 2015] |
| Date of Deliberation | : | 22 April 2016 |
| Vote of the Legislature | : | Provincial NCP Permanent Delegates to negotiate in favour of the Bill, taking into consideration the input mentioned in the Report. |
| HON. PHALA K.A | : | 22 April 2016 |
| COMMITTEE CHAIRPERSON | : | DATE |

Tel: 015 633 5071 / 8000 - Fax: 015 633 8185 / 015 633 8658



1. INTRODUCTION

The Expropriation Bill [B 4B – 2015] was referred to the Legislature by the National Council of Provinces (NCOP). Subsequently, the Legislature referred it to the Portfolio Committee on Public Works, Roads and Infrastructure for consideration and to confer a negotiating mandate to NCOP Permanent Delegates.

2. PURPOSE OF THE BILL

To provide for the expropriation of property for a public purpose or in the public interest and to provide for matters connected therewith.

3. CONSIDERATION OF THE BILL

The NCOP Permanent Delegate together with Department of Public Works briefed the Portfolio Committee on Public Works, Roads and Infrastructure on the principle and provisions of the Bill during a meeting held on 16 March 2016.

4. PROCEDURE

The Committee having been briefed on the Bill decided at its meeting held on 16 March 2016 to conduct pre-public hearing and public hearing on 08 April 2016 and 13 April respectively. The purpose of the Pre-Public hearing was to educate and keep stakeholders abreast about the contents of the Bill to prepare for well informed input during the actual public hearing. The Committee held a public hearing on 13 April 2016 to solicit public input and comments on the provisions of the Bill.

5. INPUT AND COMMENTS ON THE BILL

The following input and comments were made by stakeholders:

5.1 In expediting expropriation, it was realized that other Acts and mechanisms were instituted before the introduction of this Bill. It was established that this Bill would contribute to winding processes to address the land question in South Africa.

5.2 Expropriation in public interest.

While other stakeholders felt that the expropriation can be justified for purposes of a national interest such as land reform, the act should do more to define and balance "public interest". The view raised was that most beneficiaries of land reform are today worst off than before they got access to land. They have no access to financing as they can not offer the land as collateral at a financial institution, and most now seek out a living on a farm which has lost a substantial part of its value due to lack of capacity to maintain it.

5.3 Expropriating authority

It was the view of some stakeholders that this Bill is fundamentally flawed in its departure from a position where it allows the expropriation authority to be the coach, referee and player. To rectify this, the following needs to be added to the Bill:

5.3.1 any expropriation authority should be required to first obtain an order from the High Court, which should also validate the grounds, the reason or purpose, and the process leading to the compensation offered, before issuing a notice of expropriation.

5.3.2 Expropriation is a Bill which can have devastating consequences for the owners, and even though this time allows for the court to have a final say, the court procedures are extremely expensive and protracted, which often leaves it out of reach for a vast majority of land owners. As the state might intend in any expropriation case, it should carry the burden for litigation costs.

5.4 Objections to offers

According to other stakeholders, Clause 25 of the Constitution gives the expropriating authority the right to extend any time period stipulated in the Bill by mutual agreement with the owner or relevant holder of rights, but the same right is not available to the owner or holder of rights. This was viewed as discriminatory in nature and should be changed that the same right is available to the other indicated parties involved.

It was the view of the participants that the 20 days as intended in clause 13 is too short a time for any landowner to weigh up options, get legal and financial advice, find finances to fight an unacceptable decision by an official use of government funds. Keeping in mind that the money offered is often all the landowner has to

support his family into his retirement, the importance of fair compensation for land is inevitable.

5.5 Valuation

It was conceded that property valuation in SA is a well developed science, practiced in a well regulated legal framework. This Bill does not specify how valuers should go about to calculate the value of the "discount clauses" in chapter 25.3 of the constitution, i. e. history of acquisition, purpose of the expropriation, current use and state investment in the land. The concern was that it might bound to cause conflict, disrupt land markets and **wreck agricultural financing** if there is no clarity on the matter.

It was the view of stakeholders that the Bill should put an obligation on the expropriating authority to be transparent in the calculation of proposed compensation by serving the owner with the full valuation report and a complete breakdown of all discounts applied to the valuation.

The absence of compensation for consequential losses/expenses, such as for moving from the property, and personal expenses as a result of the unexpected change in future plans of the affected family, is simply not fair, neither equitable to the owner. There should be provision for at least 10% of the agreed upon compensation, as additional compensation for consequential expenses.

5.6 Custodianship vs ownership

Participants were concerned about the applicability of the earlier clause in the 2013 Investment Bill which stated that there would be no expropriation (and so no compensation to be paid) if "the State did not acquire ownership" of an investor's property. This indicated that no investor, either local or foreign, would be entitled to any compensation if the State took its property as "custodian" rather than as owner, or if the State's actions amounted to a "regulatory" or "indirect" expropriation, or deprivation. In ensuring fair and equitable, the state should do more to ensure that individuals do not suffer losses by state actions.

It was indicated that **agricultural land should be excluded** from any category of assets that the state may become the custodian of. Land (title deed on land) forms the basis of agricultural financing. Taking agricultural land under state custodianship will create a system where capital for production can only be acquired from the state. This might leave food security as vulnerable informed by lack of support to farmers. Such

a system will also put pressure on treasury that will be unbearable, causing food security to collapse in total.

5.7 Payments

It was raised that the Bill should compel the state to pay in full in advance of the date of transfer, and should be liable to penalties and interest on late payments on all its obligations, which should include compensation for consequential loss.

In addition to this, **clause 17(3)** should be replaced with the obligation to pay compensation in full before or on the date on which the right to possession of property will pass to the expropriating authority as intended in *clause 8(3)(f)*.

5.8 **Clause 12(1)(c)** should not to be removed or changed as it is in the current bill, or neglected in the process of expropriation.

5.9 Expropriation be utilized as a last resort to settle a case where there is no other remedy, with full record of the alternatives explored beforehand.

5.10 The **definition of expropriation** refers to “upon request” but nowhere in the act this wording is explained. This opens the way for request by parties trying to settle personal disputes by using this Bill as a shield. Therefore a suggestion has been made to the effect that **Expropriation means the compulsory acquisition of property by an organ of state in by exercising its statutory powers**”.

5.11 The wording and meaning of “**public interest**” as stipulated in the Constitution of South Africa should be the only meaning and not be expanded in this Bill.

5.12 The Bill was found to be silent and not indicating this “envisaged Act” to be the Principal Act to other Expropriation Acts.

5.13 The Bill does not have a clause for “forceful expropriation to empower government”.

5.14 Government must determine the expropriation price and not the owner. Government must have absolute power to expropriate.

5.15 Trespassing Act should be reviewed to empower government to implement the Expropriation Act.

Fair and equitable should be fair and equitable to ALL parties involved, and NOT be delivered to the interpretation of only the government or the state. While it was realized that ultimately the courts will give content to the principles at stake, it was indicated that the Bill should from the outset be clear that the notion of "Fair and

5.22 Chapter 5, clause 12, Determination of compensation: Fair and equitable compensation.

PROPOSAL: The intention to expropriate has been taken already; the decision then should be on what method of compensation could be considered to be reasonable given circumstances. The services of an acknowledged experts in the field of valuation should be employed to establish a reasonable amount of compensation for the property as contemplated by the PFMA.

section 26: if no agreement on the amount of compensation payable can be reached between the expropriating authority and owner or holder of a right within a specified period, the expropriating authority must take the decision whether or not to expropriate. Provision is made for further negotiation on compensation with the owner or holder of a right. Where a *notice of intention to expropriate* has been served, and the parties could not agree on the amount of compensation payable within a specified period, the expropriating authority cannot be expected to take a decision not to expropriate, as a notice of intention to expropriate has already been served.

5.21 Chapter 4: Intention to expropriate and expropriation of property

5.20 There are array of authorities within all spheres of government that are empowered to expropriate property, through various pieces of legislation, however, traditional leaders though they own land they were excluded. And, to that effect "Title deed should be with Senior Traditional Leaders (Magoshi/Chiefs)"

5.19 Municipalities must be entrusted with power to expropriate as most of the properties are found at municipal level.

5.18 Exclusions for expropriation should be included in the regulations.

5.17 The Bill was found to be silent on other Expropriating Acts.

5.16 Expropriation Act of 1975 must be repealed; it guarantees only the occupants as the rightful owners of the land.

equitable" should at no time be applied in such a way that an individual citizen be forced to pay the bill for land reform which is a national imperative. The Bill should stipulate that **no individual should be left in a position worse than before he was expropriated.**

5.23 **Chapter 5 – 9** must be deleted from the Bill. No amount of money can buy land of forefathers. It was viewed that this Bill promotes the failed willing buyer-willing seller system; which according to other stakeholders dismally failed to achieve set target of 30% of 1994.

5.24 **Chapter 6, clause 21 (1),** Mediation and determination by court, it was established that the Bill was not explicit on timeframes for mediation as it allude to "...finalization of the process without undue delay by either party".

5.25 **Clause 22,** there should be control measures in case the state fails to pay in a process of urgent expropriation

5.26 **Chapter 9: Related matters: Civil fines and offenses**

Section 27: In relation to criminal law and the purpose of criminal law. Violation of state law should be regarded as criminal act. Therefore, for violation of the expropriation not to be regarded as criminal, then it will not be able to serve as a deterrent.

5.27 The Bill was not explicit on which properties are covered by the Bill including restored property.

5.28 The capacity of the Department of Public Works to implement the Bill must be enhanced.

6. RECOMMENDATIONS

The committee having interacted with NCOP, Department of Public Works and stakeholders would like to recommend that:

6.1 the President should establish Expropriation Commission to expedite the expropriation of land in South Africa.

6.2 the Bill should insert a paragraph to enhance the "envisaged Act" to be the "principal Act" to other existing legislation implemented by other expropriating authorities.

6.3 *Where notice of intention to expropriate* has been served, services of the state valuer should be employed to establish a reasonable amount of compensation for the property as contemplated.

6.4 Timeframes for the negotiations and mediation should be included in the Bill.

6.5 The capacity of the department to implement the Bill should be given serious consideration informed by need for land all over the country.

6.6 All expropriating authorities should be seen to be exercising power entrusted on them.

6.7 Municipalities must be entrusted with power to expropriate as most of the properties are found at municipal level.

6.8 Traditional authorities should be entrusted with expropriating authority as they exercise public power.

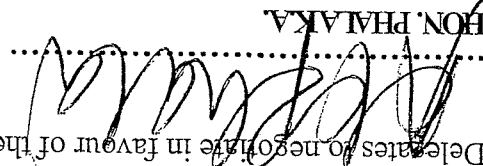
6.9 Exclusions for expropriation should be included in the regulation to be made by the Minister in terms of sec. 28 (1)

6.10 There must be a review of "Trespassing Act" to facilitate expropriation.

7. NEGOTIATING MANDATE

The Portfolio Committee having considered and made recommendations on the Bill, hereby confer a negotiating mandate to the National Council of Provinces' Permanent Delegates to negotiate in favour of the Bill.

HON. PHALAKA



CHAIRPERSON: PORTFOLIO COMMITTEE ON PUBLIC WORKS, ROADS AND INFRASTRUCTURE