



**NORTH WEST PROVINCIAL LEGISLATURE**

**NEGOTIATING MANDATE**

**TO : HON E R MAKUE**  
**ACTING CHAIRPERSON : SELECT COMMITTEE ON ECONOMIC AND BUSINESS DEVELOPMENT**  
**NAME OF BILL : EXPROPRIATION BILL**  
**NUMBER OF BILL : B 4B- 2015**  
**DATE OF DELIBERATION : 22 APRIL 2016**

**VOTE OF THE LEGISLATURE**

The Portfolio Committee on Public Works, Roads and Transport and Community Safety [B 4B- 2015].

The delegation representing the Province of the North West in the National Council of Provinces (NCOP) is conferred with the mandate to negotiate in favour of the Bill; taking into account the attached recommendations and annexures (Written submissions from interested parties).

**HON. M N MOTLHABANE**  
**CHAIRPERSON: PUBLIC WORKS, ROADS**  
**AND COMMUNITY SAFETY**

**DATE**

**ATTACHMENT TO NEGOTIATING MANDATE ON THE EXPROPRIATION BILL [B 4B-2015]**

1. The Bill should include a provision that will address situations where the state is the trustee of property that is to be expropriated, so as to curb conflict of interest.
2. The bill proposes that property should be acquired first, and then compensation will come later. A proposed approach is that, after the evaluation of property, and consent to have it expropriated, compensation should be given to the owner immediately before the state could begin to own it. The dates and time frames should be clarified within the contents of the bill itself.
3. Clause 12 (1) of the bill states the circumstances to be considered when determining compensation, however, this clause seems not to address expropriation of property that is still under mortgage full. Most private property owners such as farmers pay their farm loans through banks. If the compensation is less than the amount owed by the farmer, the concern is who will pay the rest of the mortgage to the banks since the property will be under the state now.
4. The definition of 'property' given in the Bill is that "is not limited to land and includes a right in such property." This definition is quite vague and may open the process of expropriation to misapplication. There are different types of properties such as movable property, intellectual property; etc. therefore the definition needs to be reviewed.
5. Section 17 (2) of the Bill on compensation states that "the expropriating authority must pay, not less than 80 % of the amount or offer compensation as stipulated in the notice of expropriation'." This section should be revised to read "the expropriating authority must pay, 100% of the amount", this will be on the basis of fairness and to allow the expropriated owner to carry on with their life as normal.
6. The Bill is silent on compensation for property that was received during apartheid era; whereby the owners were disposed of their land. The Bill should at least cover instances whereby the land to be compensated is one that was forcibly taken from the original owners.

7. The bill does not include the traditional leaders as stakeholders in the process of decision making. Only the department of rural development and land reform is included, while the major stakeholders such as the local chiefs are excluded in the scene of decision making.
8. The bill does not clarify the role of the valuator general in a more detailed and elaborate sense. More clarity on his/her role should be highlighted in the expropriation process.
9. The Bill makes provision on courts as the last resort in situations where mediation between the expropriating authority and the owner has failed. It should be noted that courts are not easily accessible to all South Africans and court processes are expensive; therefore it will only be fair if a provision was to be included in the Bill on the endowment of free legal assistance for purposes of expropriation process

4/11/2016

From  
Behalf of Ratau Owners and Heirs  
Putfontein 159 Portion 1 and Brackuil

Attention

South African Legislature

Inputs into Expropriation Bill Public Participation 12/04/2016

We the owners of Ratau – Putfontein 159 Portion 1 we have the following concerns about the current Bill.

1. The bill does not take future plans and potential of the Farm as part of criteria of determining the amount compensation. This become relevant as the law or condition under willing seller and buyer does not apply in this process. Missing is a willing seller.

To include the above we will be satisfied if the Bill can include the clause that states the owner(s) of the property being expropriated will be compensated with the amount that will allow him to have the same status as he is currently as a minimum.

This clause will take care of most inconveniences caused and will allow the current owner of the property being expropriated to go and buy a similar farm with similar potential elsewhere.

Non tangible benefits(value) not considered by the bill.

2. We are not happy with chapter 5 clause 2(d) that says the improvements made after the notice to expropriate was issued will not be included in the amount to compensate.

What about improvements that were already started and are the middle of their process. Who will pay breaches of contracts if contractual agreements are entered into prior this notice.

What about proven intimidation acts to stop improvements with intention to keep the value of the property low and with an attempt to render the property not fully utilized.

3. This act is viewed as a negating black empowerment and equity initiatives if the state is buying off the black owned private farms.
4. These public hearings/participations are announced in a short notice and we believe lots of other people are excluded in this process
5. Non Biased mediation body must be elected to avoid court action as the court action might be unfair in the case of an individual vs the state. Playing field not leveled.
6. The compensation amount must be paid in full to allow the previous owner to carry on with his life as the interest does not cover loss of income nor it has been specified.

From

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Behalf of Ratau Owners and Heirs



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BM/ms.16/2016

18/04/2016

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**SUBMISSIONS ON THE EXPROPRIATION BILL 2015**

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**1. INTERPRETATION**

The terms and definitions used in the Expropriation Bill, 2015 (the "**Bill**") shall bear the same meaning as used and defined herein.

**2. INTRODUCTION**

2.1. On or about 11 April 2016, the North West Provincial Legislature ("**Provincial Legislature**") invited all relevant stakeholders and traditional management, to a public hearing, to comment and submit their respective remarks on the Bill.



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2.2. The Bill has subsequently been issued for comments since 23 February 2016 and the submissions are due on 18 April 2016. The Bill proposes to repeal the Expropriation Act, 63 of 1975 (the “**Expropriation Act**”) in its entirety. The Bill, amongst others, seeks to ensure that expropriation is not undertaken arbitrarily and that a person whose right in property is expropriated is entitled to just and equitable compensation.

### 3. OUR SUBMISSIONS

#### 3.1. SECTION 1 – DEFINITIONS

- 3.1.1. The definition of “Owner” confines itself to a person whose name is in such property or a right in such property is registered. The definition excludes “a holder of a right” in property if such right is not registered. This goes against the presentation delivered by the Department of Public Works at the North West Provincial Legislator on 13 April 2016 on the Bill. The presentation on slide 4 provides that the constitution extends its protection to both holders of registered and unregistered rights in property and that a holder in a right in property, whether registered or unregistered, is constitutionally entitled to compensation when property is expropriated.
- 3.1.2. The exclusion of “a holder of a right” from the definition of “owner” is problematic for Royal Bafokeng Nation and similar other communities who continue to hold unregistered right in property which remain unconverted to real rights by government and as such will be treated differently in the event that the “expropriating authority” decides to expropriate property according to the Bill in its current form.
- 3.1.3. Currently the Bill in the preamble expressly provides that those with unregistered rights in property will be treated on a procedurally fair basis and those whose rights in property expropriated will be entitled to just and equitable compensation.



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Having read through the Bill, the owner and holder of a right are afforded the same process and are treated the same in terms of procedure, which we assume is a "fair" process. Does the preamble suggest that when considering just and equitable compensation, the expropriating authority will use the same scale of measure for the compensation, which is to be a just and equitable scale for both the owner and a holder of a right?

- 3.1.4. For instance, if the expropriating authority expropriates property (A) and property (B) which the properties are situated adjacent to each other and are the same in size, will the expropriating authority compensate both equally, if property (A) is owned by Mr X and Mr Y holds a right in property (B)? Further, how will the expropriating authority compensate in the event that Mr X is an owner of property (A) and Mr Y is a holder of a right on property (A)?
- 3.1.5. In light of the above, the Royal Bafokeng Nation is of the view that the definition of owner and holder of a right read with the provisions of the preamble do not sufficiently cater for the various forms of rights in property which the Royal Bafokeng Nation and other similar traditional communities own and hold property.
- 3.1.6. It is imperative for purposes of this submission that we guide and assist the Minister on the various forms in which the Royal Bafokeng Nation own their respective land.
- 3.1.7. The Royal Bafokeng Nation owns and holds land in the following manner:
- 3.1.7.1. land privately owned, which was purchased by the Royal Bafokeng Nation by means of private funds;
- 3.1.7.2. land held in trust by the Minister of Rural Development and Land Reform on behalf of the Royal Bafokeng Nation;



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- 3.1.7.3. land proclaimed as provided by Government Regulations and allocated to the Royal Bafokeng Nation;
- 3.1.7.4. land to be claimed by the Royal Bafokeng Nation in terms of the Restitution of Land Act 22 of 1994 (as amended) ("**Restitution of Land Act**") and not yet transferred or registered to the rightful owner;
- 3.1.7.5. Mining Rights on various farms; and
  - 3.1.7.1. Prospecting Rights.
- 3.1.8. The land privately purchased by the Royal Bafokeng Nation is owned and registered under the Bafokeng which is a *Universitas Personarum*. The history of the acquisition of land by the Royal Bafokeng Nation has, on various occasions, been submitted to the Parliamentary Portfolio Committee. The history can always be resubmitted upon request.
- 3.1.9. With reference to land currently held in Trust by the Minister of Rural Development and Land Reform on behalf of the Royal Bafokeng Nation, it is important to note that this land was acquired and purchased by the Royal Bafokeng Nation but for the dispossession of property due to past racially discriminatory laws and practices, and some of this land, was never registered in the name of Royal Bafokeng Nation.
- 3.1.10. Land which was proclaimed by government regulation is still not registered in the name of the Royal Bafokeng Nation. The location and extent of the land is yet to be determined and transferred to the Royal Bafokeng Nation.
- 3.1.11. Land that is currently being claimed for restitution is land which the Royal Bafokeng Nation purchased with its own monies but due to discriminatory laws, ownership of such properties was never registered in favour of the Royal Bafokeng Nation.





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Registration will not be confirmed until such a time that a determination is made regarding the claim in the said property.

3.1.12. Three of the five forms in which the Royal Bafokeng Nation hold property is in an unregistered form and accordingly such rights are unregistered. Consequently, the expropriating authority is only empowered to deal with unregistered rights only in a procedurally fair basis.

3.1.13. The danger of having rights in property that are not properly registered is that such rights are not a real right and accordingly at risk of not being fully realised and communities like Royal Bafokeng Nation can actually be denied security of tenure in land where such land can expropriated before it is transferred, registered and owned by the rightful owner. It begs the question of how such rights are recognised and protected by law if in the same breath they are to expropriation.

### 3.2. SECTION 3 – POWERS OF MINISTER TO EXPROPRIATE

3.2.1. Section 3(1) stipulates the powers of the Minister to expropriate. It provides that an organ of state, other than an expropriating authority, may request the Minister to expropriate, in the event that it satisfies the Minister that it requires such property for a public purpose or in the public interest, then the Minister **must** expropriate that property for that organ of state upon its written request.

3.2.2. The above provision is problematic in that the Minister only considers the organ of state's submissions in order to determine whether to expropriate or not, and whether such required expropriation will be for a public purpose or a public interest. There is no equal and competing submission that the Minister has to consider before making a determination to expropriate and this is precarious as the Minister's determination is not tested or balanced by considering the owner's or the holder's submission for a request not to expropriate.



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3.2.3. The Royal Bafokeng Nation like other communities, is a different “owner” and a different “holder of a right”. Their rights in property are owned or held on behalf of a large number of community members, in our case approximately 300 000 members, who currently benefit from the current plans that the Royal Bafokeng Nation has been planning and executing over the years. We are of the view that such benefit may easily satisfy the inquiry of whether the plans executed are for public purpose and of public interest. The Royal Bafokeng Nation’s infrastructure development plans that are contained in the Royal Bafokeng Nation Masterplan on Target for 2035, building a better future for all (the “**Royal Bafokeng Nation Masterplan**”) attached herein as annexure A, for your ease of reference.

3.2.4. The Royal Bafokeng Nation’s Masterplan activities are planned over period of time and cater for the following:

- 3.2.4.1. Education;
- 3.2.4.2. Health Care;
- 3.2.4.3. Social Services;
- 3.2.4.4. Sports and Culture;
- 3.2.4.5. Environment;
- 3.2.4.6. Roads and Transport;
- 3.2.4.7. Agriculture and Infrastructure;
- 3.2.4.8. Recreation and Tourism;
- 3.2.4.9. Residential Areas; and
- 3.2.4.10. Commercial and Industrial Development.

of which all are for public purpose and a public interest in nature and the Minister may benefit from considering such plans before making a determination.



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3.2.5. We therefore recommend that this section be redrafted to allow the Minister an opportunity to consider' the owner or the holder of a right's submission before making a determination, given the immediate vesting of property on the expropriating authority.

3.2.6. Further, we recommend that section 3 should provide for referral to dispute resolution in terms of section 21, should the owner or holder of a right not agree with the Ministers determination to expropriate.

**3.3. SECTION 5 – INVESTIGATION AND VALUATION OF PROPERTY**

3.3.1. Section 5 sets out methods and procedures that are required to be followed by an expropriating authority prior to issue of an expropriation notice. This section aims assist an expropriating authority, by appointing an expert and/or experienced person to obtain necessary information and/or documents required, to inform the sought expropriation at hand.

3.3.2. We are in support of this section to the extent that the expert person authorised thereto, shall not enter the property unless both the "owner"/ "holder of a right" and the expropriating authority has consented in writing to such entry for purposes of section 5 (2) (a).

3.3.1. Right to access ones private property cannot be disregarded on the basis that the expropriating authority is conducting investigations. Right to privacy is protected by the Constitution and since this Bill seeks to align itself to the constitution, we then recommend alignment in the true sense to Constitutional prescripts.

**3.4. SECTION 7 AND 8 INTENTION TO EXPROPRIATE AND EXPROPRIATION OF PROPERTY**

3.4.1. The notice of intention to expropriate and the notice to expropriate in section 7 and 8 of the Bill are both delivered to an owner and a known holder of a right.



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It is possible that Royal Bafokeng Nation and other similar traditional communities are unknown holders of certain parcels of land which are currently in the process of being claimed in terms of the Restitution of Land Act. In the event that the communities become holders of a right in land post that particular land being expropriated, it will be a tragedy that such communities must simply follow the process set out in section 10 and 11 of the Bill and if successful in their claim, follow the process set out in section 12, the compensation before the land is properly restituted to the rightful owner.

- 3.4.2. It is imperative to note that the Royal Bafokeng Nation and other similar traditional communities to date may be perpetual holder's of a right in land which they own and however, as a result of past discriminatory laws and practices were dispossessed of such land. As much as the Royal Bafokeng Nation is a known holder of a right in such instances, their right in terms of the relevant property has been watered down to a mere right which before it is realized as a real right can be expropriated.
- 3.4.3. It is important that the Minister must, before making a determination in terms of section 3, consider and weigh the provision of section 25(4) of the Constitution, in light of the fact that a century has passed since the past discriminatory dispossession of property and the status of such property remains unresolved and unconfirmed due to no fault of the Royal Bafokeng Nation and other similar traditional communities..
- 3.4.4. It would be travesty to expropriate any property, in particular the property of traditional communities, before the Minister, an organ of state or any other expropriating authority are seen to be committing to land reform and restitution of land to those who were previously dispossessed of their property.



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**3.5. SECTION 10 AND 11 VERIFICATION OF UNREGISTERED RIGHTS AND CONSEQUENCES OF EXPROPRIATION OF UNREGISTERED RIGHTS**

- 3.5.1. In the unfortunate event that a property is expropriated without the knowledge of a holder of a right, the rights of the holder of a right are contained in section 10 and 11 of the Bill. The process support the notion in the preamble that persons who are expropriated of unregistered rights in property shall be treated in a procedurally fair basis.
- 3.5.2. Section 10 provides that if after the date of expropriation a holder of a right, claims non compensation for an expropriated property, the holder of a right must provide evidence of possession to substantiate a claim. In authority shall serve a section 11(2) notice which is a notice confirming that the unregistered right has been expropriated together with a notice that was served on the expropriated owner, the date on which the property passes or will pass to the expropriating authority. As soon as the section 11(2) notice has been served on the expropriated holder, the Bill shall apply as if the notice was the section 8(1) notice, that is, notice to the known holder of a right.
- 3.5.3. If the expropriated owner or holder knew of the unregistered right and failed to inform the expropriating authority, the expropriated owner or holder shall be liable to the expropriating authority for the compensation paid to the holder of a right. If the expropriating authority does not accept the claim, the expropriating authority informs the claimant of its decision and reasons thereto.
- 3.5.4. The unsuccessful claimant does not seem to have further recourse should his claim be rejected. Once the reasons are given there seem to be no other process provided for further relief in the current version of this Bill. This process is unjust, inequitable and arbitrary as the claimants are reduced to the mercy of the expropriating authority and accordingly unconstitutional. The fact that a right in property is not registered, given



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the history of South Africa, should not arbitrarily deprive person of property.

- 3.5.5. Unlike the unsuccessful claimant, the successful claimant is restored to the process of the Bill as if he were present at the time of the notice and in terms of section 14 read with section 15, the claimant may confirm compensation if contained in the notice or offer claim compensation based on supporting particulars. If the expropriating authority does not accept the claimants offer, he or she makes a just and equitable offer with supporting particulars. If the claimant does not accept the offer within stipulated timelines, then the provision of section 21 (Mediation and Determination by Court) applies.

**3.6. SECTION 21 – MEDIATION AND DETERMINATION BY COURT**

- 3.6.1. Section 21 provides that in the event that there is a dispute between an expropriating authority and an owner over compensation sought and the amount thereof, such a dispute shall be referred to mediation.
- 3.6.2. In light of the above, section 34 of the Constitution of the Republic of South Africa ("**Constitution**") provides that:

*"everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or; where appropriate, another independent and impartial tribunal or forum"*

- 3.6.3. We are of the view that this section limits the recourse available to owners and holders of rights in property only to disputes in relation to compensation. Section 21 contradicts with the provisions of the Constitution and section 21 in its current form renders section 21 unconstitutional.



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- 3.6.4. We accordingly recommend that the clause be amended to the extent that it is aligned with the Constitution which is stated in the preamble of the Bill. Further, section 21 must expressly provide that:

***“any person has the right to approach a court or, where appropriate, another independent and impartial tribunal or forum to resolve any dispute relating to the interpretation and/or the application of the Act”***

**3.7. SECTION 22 – URGENT EXPROPRIATION**

- 3.7.1. Section 22 provides that the expropriating authority may take a right to use property temporarily for so long as it is urgently required, for a period not exceeding 12 months, in the case of a disaster as defined in the Disaster Management Act 57 of 2002 or where there is a court order to that effect.
- 3.7.2. Our only submission regarding section 22 is that the expropriating authority may only remain in the property in question for as long as the emergency or disaster as defined in the aforementioned act persist, which must not be more than 12 or 18 months or as the court may direct. There is no point why the expropriating authority should remain in the property when the emergency and/or disaster ceases.

**4. CONCLUSION**

- 4.1. Notwithstanding our submission, it is imperative for the purposes of concluding this Bill that the Legislature takes into account all the types and forms in which property can be owned in South Africa.



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As set out above, traditional communities such as the Royal Bafokeng Nation, acquired and own their rights in property in various forms, in which some of these forms of rights are not recognised by the Bill.

- 4.2. Our submissions seeks to shed light to the Legislatures so as to take cognizance of the traditional communities and the various forms of which they own and possess property. Currently, the Department of Rural Land and Land Reform granted many South African's an opportunity to lodge claims on land which they were previously dispossessed, the cut-off date for the said lodgement is extended for an additional 5years leading up to June 2019. Accordingly, such an extension must be borne in mind by the Legislature that, the Bill pose a risk over property that is not yet restituted but subject to expropriated.

Yours sincerely,

**BASHI L. MAKGALE**  
*Director OPERATIONS*  
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