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The Acting Chairperson:
Select Committee on Economic and Business Development
Parliament of the Republic of South Africa
P.O. Box 15
CAPE TOWN
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Dear Mr Makua

CLAUSE 9 OF THE EXPROPRIATION BILL [B 4B—2015]

1. In the Western Cape Provincial Parliament's negotiating mandate in respect of the Expropriation Bill [B 4B-2015] ("the Bill") to the Honourable ER Makua, the Acting Chairperson of the Select Committee on Economic and Business Development, the Standing Committee on Transport and Public Works supports the Bill subject to specific proposed amendments.

2. In respect of clause 9, and specifically subclause (2)(a), in paragraph 6.3 the following is stated:

"This subclause provides two options for the transfer of possession, either on the date provided for in the notice of expropriation or on a date agreed to between the expropriating authority and the expropriated owner / holder. This implies that where there is no agreed date for transfer of possession, then the date stipulated in the notice of expropriation applies. This is in conflict with section 26(3) of the Constitution¹."

¹ Constitution of the Republic of South Africa, 1996 ("the Constitution").

3. Whilst the paragraph does not contain a proposed amendment, it states that the subclause is in conflict with the Constitution. We have indicated to the Acting Chairperson that we will submit our views in respect of the statement in question to the Acting Chairperson in writing.

4. Section 25(1) and (2) of the Constitution provides as follows:

"(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court."

5. The Bill, which will be a law of general application if promulgated, seeks to provide for the expropriation of property for a public purpose or in the public interest². In order to so provide the Bill seeks to establish an expropriation process that must be followed by all expropriating authorities when they expropriate property. The Bill, in broad outline, provides for—

- the investigation and valuation of property by an expropriation authority to ascertain the suitability of the identified property for the intended purpose;
- a notice of intention to expropriate to all known affected persons;
- a notice of expropriation if the expropriating authority after due consideration of all information and submissions received, decides to proceed with the expropriation;
- urgent expropriation; and
- compensation for expropriation.

6. In terms of clause 8(3)(f) of the Bill, a notice of expropriation must include amongst other things "the date on which the right to possession of the property will pass on the expropriating authority".

7. Section 9(2)(a) of the Bill provides that the "expropriating authority, or the person on whose behalf the property was expropriated, must take possession of the expropriated property on the date stated in terms of section 8(3)(f) or such later date

² Long title of the Bill.

as may be agreed upon with the expropriated owner or expropriated holder".

8. Section 26(3) of the Constitution reads as follows:

"(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

9. In terms of section 26(3) of the Constitution, no one may be evicted from their home without a court order after considering all circumstances. It also provides that no legislation may permit arbitrary evictions.

10. In *Pheko and Others v Ekurhuleni Metropolitan Municipality*³ the Constitutional Court stated the following in respect of section 26(3):

"[35] The Municipality's understanding of section 26(3) as set out above is incorrect. The Municipality's proposition simply turns section 26(3) on its head. Section 26(3) must be read as a whole. It does not permit legislation authorising eviction without a court order. (footnotes omitted)".

11. Neither clause 9 nor any other provision of the Bill authorises eviction without a court order. Clause 9 of the Bill provides for the vesting of ownership of the expropriated property in the expropriating authority and when possession of the property takes place. In terms of clause 9(2)(a) of the Bill, an expropriating authority takes possession of the property on the date set out in the notice of expropriation contemplated in clause 8(3)(f) or such later date as may be agreed upon with the expropriated owner or holder contemplated in clause 9(2)(a). If the owner or holder concerned and the expropriating authority cannot agree upon a later date, the owner or holder may approach a court⁴.

12. Furthermore, since the Bill does not empower an expropriating authority to evict an expropriated owner or holder from the property in question, the expropriating authority will have to obtain a court order if the owner or holder in question does not willingly vacate the property on the relevant date contemplated in clause 9(2)(a) of the Bill.

³ 2012 (2) SA 598 (CC).

⁴ Clause 21(3) of the Bill provides that subclause (2) of the Bill "does not preclude a person from approaching a court on any matter relating to the application of this Act (our emphasis)".

13. In our view therefore there is no conflict between the provisions of the Bill and the provisions of section 26(3) of the Constitution.

Yours sincerely

A handwritten signature in black ink, appearing to read "G Hoon". The signature is stylized with a large, circular flourish at the beginning.

**for CHIEF STATE LAW ADVISER
G Hoon / A Johaar**