**MEDIA STATEMENT**

**AD HOC COMMITTEE ON SECTION 25 HEARS BILATERAL INTERNATIONAL TREATIES REFER TO PROPERTY, NOT LAND**

**Parliament, Wednesday, 27 November 2019 –**The Ad Hoc Committee to Initiate and Introduce Legislation Amending Section 25 of the Constitution today heard that South Africa has 49 bilateral international treaties (BITs) containing legal undertakings on the expropriation and compensation of the property of any investor from countries included in those BITs.

The BITs do not refer to “land”, but extend protection to investments defined in open-ended terms in an asset-based approach. This covers “every kind of asset” of an investor in the territory of the host country, with some economic benefit associated with the investment.

The committee was informed by Ambassador Xavier Carim: Deputy Director-General International Trade and Economic Development Division in the Department of Trade and Industry that on the matter of expropriation and compensation, if the land of a foreign investor is expropriated and that investor is a citizen of a country with a BIT with South Africa (including where the survival clause is in effect), the affected investor would be in a position to invoke a legal challenge against the South African government if the investor is not satisfied with the compensation offered.

Committee Chairperson Dr Mathole Motshekga made it clear that this is a first engagement and the committee will ask for further information, if necessary.

Three arbitrators under the terms of International Settlement of Investment Disputes would make a determination on the matter. While the outcome cannot be predicted, arbitrators may take into account national legislation, but their primary reference is the terms of the BIT itself. On the question of compensation, past cases indicate that the standard has tended to be the “market value” of the investment immediately before the expropriation took place.

The committee heard that the South African government may face a challenge if the new legislation could be construed to impact negatively on the value of land belonging to a foreign investor. Some of the jurisprudence on investment treaties refers to a standard of “legitimate expectation” in respect to returns from investment.

According to Mr Carim, article 10 of the 2015 Investment Act on legal protection of investment reads: “Investors have the right to property in terms of section 25 of the Constitution”. A minor change to the Investment Act may be required if Section 25 if the Constitution is adjusted.

In response to statements by committee members that the Constitution trumps international Law and BITs, Ambassador Carim suggested the committee obtain a legal opinion on the matter.

The committee is expected to complete its work by 31 March 2020.

**ISSUED BY THE PARLIAMENTARY COMMUNICATION SERVICES ON BEHALF OF THE CHAIRPERSON OF THE AD HOC COMMITTEE** **TO INITIATE AND INTRODUCE LEGISLATION AMENDING SECTION 25, DR MATHOLE MOTSHEKGA.**