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| **Submission by COSATU on the Expropriation Bill** |
| **28 February 2021** |
| Cosatu logoSubmitted to the Portfolio Committee on Public WorksNational AssemblyParliament |

1. **INTRODUCTION**

The Congress of South African Trade Unions (COSATU) strongly welcomes and supports the 2020 Expropriation Bill tabled by the Department of Public Works.

COSATU participated in both of the Bill’s exhaustive and inclusive NEDLAC processes in 2013 and 2019/20. COSATU’s concerns and inputs were dealt with satisfactorily during the NEDLAC engagements.

The Department deserves to be commended for the open approach it took to both rounds of the negotiations at NEDLAC and for how it sought to accommodate COSATU and other constituencies’ concerns. COSATU appreciates this approach from our government.

COSATU supports the Bill as an important legal, administrative and political tool to further capacitate government to implement the African National Congress’ electoral manifesto and historic objectives.

These objectives include such key matters as eradicating the legacies of apartheid, land reform and restitution and ensuring that the mineral wealth of the land belongs to all who live in South Africa as eloquently articulated in the Freedom Charter.

We welcome the additional provision in the 2020 bill providing for compensation and nil compensation. This is critical to addressing the inequities of the apartheid and colonial eras, to ensuring compensation is both just and equitable and to empowering government to accelerate land reform and infrastructure investments as needed.

The replacement of the existing 1975 Act was long overdue. Expropriation is a sensitive matter and the Act needs to reflect the democratic values of the 1996 Constitution.

1. **AREAS OF SUPPORT**

COSATU supports the Expropriation Bill wholeheartedly. We are hopeful that this will be a key legislative tool to empower our ANC led government to implement its electoral manifesto and speed up radical economic transformation, and in particular to fast track land reform and restitution and to ensure that mineral and other natural resources belong and benefit all South Africans.

Despite opposition to the Bill from certain right wing and alarmist organisations, we believe that the Bill in fact is progressive, democratic and in line with both the requirements and the values of the Constitution.

COSATU firmly believes that the opposition expressed against the Bill by the South African Institute for Race Relations and other conservative bodies is not based in fact. Rather their opposition is vitriolic and unrelated to the Bill. To be honest much of their opposition is based upon an ideological opposition to addressing the legacies of apartheid.

Equally much of the opposition is based upon those who have fleeced the state with exorbitant compensation demands that are often far in excess of what the owners paid for the property. It also undermines the capacity of the state to deliver upon its developmental mandate and further depletes its extremely limited resources.

The existing Expropriation Act was adopted in 1975 at the height of apartheid rule. It reflects those values and is not in line with our democratic non-racial Constitution. This Bill provides one over arching legislative and administrative framework for all expropriation processes in South Africa. Currently there are up to 150 different pieces of law covering expropriation in the different levels of government.

Key aspects that COSATU strongly supports in the Bill include the following:

**Administrative Aspects:**

* The Bill provides uniform, fair and set processes for expropriation across South Africa.
* Clear checks and balances to prevent abuses by government.
* Access to legal recourse through the courts for all parties feeling aggrieved on any issue including compensation.
* Limits to the time frames involved to avoid cases being delayed in perpetuity and thus delaying badly needed expropriation for public interest and delivery, e.g. land restitution.
* Urgent expropriation mechanisms and safe guards for cases of emergencies, e.g. disaster management.

**Transformation Aspects:**

* Limits to the time frames involved to avoid cases being delayed in perpetuity and thus delaying badly needed expropriation for public interest and delivery, e.g. land restitution.
* Provision for the need to act in the case of public interest.
* Linkages with the newly provided for Valuer General to avoid exorbitant compensation demands being placed upon government and thus denying funds for badly needed service delivery.
* Recognition of unregistered rights and the needs of unregistered rights holders which were not provided for previously.
* Public interest includes the constitutional commitments to land reform and restitution.
* Recognition of the need to provide for persons and communities’ whose land tenure is insecure due to apartheid and colonial discriminatory laws and practises.
* The need to provide redress for persons who lost property due to apartheid and colonial rule.
* The need to ensure equitable access to all of South Africa’s natural resources. This needs to include mineral resources as well as water and land.
* Compensation must include how a property was acquired and its current usage. This is critical as it will require government and the courts to include such factors as was a property acquired during forced removals in the apartheid and colonial eras. This help to prevent compensation simply being determined upon the basis of market value.
* Clear and fair instances of when nil compensation may be paid. These are based upon the Constitution, and are rationale and reasonable as they speak to unused private and state land, abandoned property, the value of state investments vs. the prior value of the property concerned to avoid owners profiteering from state investments, and the need to protect the public’s health and safety and ensure compliance with the relevant laws.
1. **CONCLUSION**

The Expropriation Bill is critical and will play an important role with regards to the government’s broad transformatory policies. The Bill and its replacement of the existing 1975 Expropriation Act is long overdue and to be welcomed. The Bill will help to ensure that expropriation acts reflect the ethos and values of the democratic Constitution.

The recognition of the need for the objectives of land reform and related policies and for compensation to be just and equitable is welcome. The requirement to take into account how property was acquired and how it is utilised are important measures to take into account the legacies of apartheid and illegitimately held property.

COSATU welcomes and supports the compensation provisions. They are in line with the Constitution, fair and reasonable.

COSATU supports the Expropriation Bill and urges its passage by Parliament.

Lastly the Federation urges the National Assembly, National Council of Provinces and Provincial Legislatures to ensure that they follow all Constitutional requirements for public participation. These need to include holding public hearings at all three levels on the Bill. We cannot afford to repeat what happened in the previous processes at the NCOP in 2015 where processes were short circuited.

Thank you.

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