ORAL SUBMISSIONS ON THE EXPROPRIATION BILL [B23B-2020]

DATE: 25 SEPTEMBER 2023

SCOPE: THE EXPROPRIATION BILL IS SUPPORTED

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1. **INTRODUCTION**:

   There were preceding Bills and amendments to the Expropriation Act, 1975 (Act 63 of 1975), and it was recorded, but this important Bill provides for the repeal of Act 63 of 1975, and to provide for matters connected therewith to be regulated by legislation. The scope of the oral submissions are to offer submissions in support of the Expropriation Bill (B23B-2020), and also to offer input on additional key considerations required to bolster the spirit and purport of Section 25[1] in general, and specifically Section 25 (5),(6) and (7).

   If relief and remedy by way of legislation is not accelerated, the original sin of land deprivation continues to prejudice our people and citizens are landless and with insecure tenure of property.

2. **SUBMISSIONS**:

   2.1 The first and second submissions propose that definitions be inserted, to be clear and to assist litigants, the Judiciary and arbitrators[2], with a clear definition of conceptual terms and key words, which provide for unambiguous interpretation of the law[3].

[1] The Constitution , Act 108 of 1996
[2] Instances that may require arbitration may be prudent to limit costs of litigation.
[3] Section 237 ; " Where the new Constitution requires the enactment of national and provincial legislation, that legislation must be enacted by the relevant authority within a reasonable period of the date the new Constitution took effect"

2.2 We propose the insertion of the definition of [**property**], [**amount of compensation**] to be inserted and clarified. It will limit the frequency of disputes, which may arise by claimants against property owners. The insertion will guard against the delays in the public interest and facilitates legislation fit for purpose. Court findings are often the subject of further litigation and delayed by appeals and reviews generally, due to conceptual contestation, on what the Legislature intended at the time, and interpretation of the words in the enacted legislation.

2.3 This third submission supports Section 12(3) (a-e) of the Bill[4]. It allows for a less rigid approach to allow for other considerations, by [**but not limited to**] being inserted in this section. An example to consider is the segment of 99 year old leases[5], and it may be justified by reading previous or current lease holding agreements, if the latter is still deemed lawful.

2.4 The validity of these types of leases and even trusts, as landowners, may be contested or disproven by accurate land audits, cadastral survey reports on a case by case basis in mediation or by litigation in court processes. The following considerations are also significant:

2.4.1 The actual date of ownership, after transfer from lease holding to ownership, relevant with compensation awards;

[4] Section 29 of the Expropriation Bill

[5] See: Vol. 71 SI : THE SYSTEM OF 99-YEAR LEASEHOLD IN SOUTH AFRICA BY H.S. JACKSON BA LLRfWI l .AI I'.(RSA) Attorney at the Supreme Court of South Africa.

"Leasehold is thus a lesser right than full ownership (dominium plenum) but a fuller and more comprehensive right than a lease, and although it resembles emphyteusis, it differs in important respects and should properly be considered as a right sui genens that obtains in land for years.".

2.4.2 If the property albeit, the land, and/or the improvements on the land by mortgage ;and/or with a previous subsidy by the state to secure transfer of ownership;

2.4.3 The transfer of lease holding agreements by marriage or by testate succession.

2.4.4 The mineral and mining rights[6], customary or religious rights of natural plants[7] and vegetation[8], and claimants with indigenous rights to be considered.[9]

2.4.5 In 1909, the reference to Indigenous Peoples[10] means our citizens may claim their rights to land and property, and should be included, but Section 25 (7) excludes rights of indigenous claims.

2.5 The <u>fourth submission</u> is that this Bill falls within functional areas listed in Schedule 4[11]; it should be implemented in accordance with Section 76(3) of the Constitution[12]. Consultative processes should capture and be binding on all indigenous peoples, who were and are deprived of land and property[13], with provincial and national accord.

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[6] Mineral and Petroleum Development Act No 28 of 2002

[7] Professor Jeremy Klaasen: "*Priority is placed on the development of few medicinal plant species for bioprospecting that are of interest to export companies and benefit individuals from European descent, restricting indigenous peoples as collectors and harvesters of plant material" like Galenia afrikana or Agropyron.*

[8] A universal comprehensive instrument recognised to advocate the rights of Indigenous peoples to property, as defined in Section 25 of Act 108 of 1996.

[99] Articles *10 and 26 of UNDRIP*, adopted 13 September 2007 and signed 2016.

[10] The Mission Stations and Communal Reserves Act 29 of 1909. See JN Mclachlan: *History of the dispossession of the rights in land of pastoral indigenous communities from 1652-1910 [ISSN2411-7870]*

[11] "Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence".

[12] *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others (CCT100/09)* [2010] ZACC 10; 2010 (6) SA 214 (CC); 2010 (8) BCLR 741 (CC) (11 May 2010).

[13] The '*Clara Bill'* was struck down by the Judiciary.

2.6 The fifth submission is grounded on **Section 25(6) of the Constitution**:

"A person or community whose tenure of land is legally insecure as a result of past discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure, which is legally secure or to comparable redress.

2.7 A comparison between two recognized kinships of the Zulu nation and the First IXam nation, with a sharp focus on rights to secure tenure of land and property may confirm that the Zulu nation is buffered by a well-known trust, against the original sin of land dispossession, but to what extent are individual Zulu claimants[14] secure of land tenure as citizens.

2.8 The people of First IXam nation are landless and campaign for rights to property, their Chiefs and people are marginalised and falls short of the glory of secure tenure of land[15] and property. In **Article 10 of the UNDRIP[16]**,the UN and RSA adopted UNDRIP in 2007, and RSA officially signed the declaration in 2016:

"Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return".

[14] Section 25(7) of Act 108 of 1996.
[15] Majority of previously disadvantaged South Africans have no access to land.
[16] Resolution 61/295 United Nations Declaration on the Rights of Indigenous Peoples (107th Plenary)

3. **CONCLUSION**:

Since 1955, the original sins were exposed by the Freedom Charter[17].No access to land, neither the land shared among those who work it. Black lawyers, with formal training should be granted opportunities to acquire upskill, to widen their scope of legal practice, to assist claimants: individuals or communities with no access to ownership of land or property. An Act of Parliament will extend this entitlement for fast tracking of the redress of the sins.

Presented by: Adv. Andre Paries[18]
Assisted by members of Constituents.

[17] Adopted in June 1955 at Kliptown, **by a Coalition**
[18] National Executive member of National Bar Council of South Africa, Provincial Executive member of the BLA (W Cape), High Commissioner of the First Ixam Nation Office.