



GAUTENG
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**INFRASTRUCTURE DEVELOPMENT AND PROPERTY
MANAGEMENT PORTFOLIO COMMITTEE**

**REPORT IN TERMS OF RULE 163 OF THE GPL STANDING RULES –
ADOPTED NEGOTIATING MANDATE
ON THE:
EXPROPRIATION BILL [B23B-2020]**

DATE: 22 SEPTEMBER 2023



1. INTRODUCTION

The Chairperson of the Infrastructure Development and Property Management Portfolio Committee Hon. Mpho Modise, tables the Committee's report on the Negotiating Mandate on the Expropriation Bill [B23B] [2020]. This is in accordance with Rule 163 of the Gauteng Provincial Legislature Standing Rules.

2. PROCESS FOLLOWED

On the 30th September 2022, the Speaker, Hon. Ntombi Mekgwe, formally referred the Expropriation Bill [B23B-2020] Section 76 ("the Expropriation Bill"), to the Portfolio Committee on Infrastructure Development and Property Management for consideration and processing. This was in terms of Rule 245 (1) read with 247 and 248.

On the 22nd February 2023, the Committee attended a virtual workshop hosted by the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure on the Expropriation Bill. In considering the Bill, the Committee conducted a meeting to receive a series of presentations from various stakeholders to empower itself on the contents of the Bill and also to appraise on any legal and socio-economic issues rising from the Bill. In that endeavour it invited the National Department of Public Works to brief the Committee on the Bill and the Department, represented by Mr Johannes Lekala, duly provided that briefing. In that same meeting, the Committee also received a briefing from the Gauteng Department of infrastructure Development and Property Management (GDID) on the views of the Executive regarding the Bill. Furthermore, the NCOP and Legal Services Unit presented on the legal opinion on the Constitutional and legal implications of the Bill. Lastly, The Committee Researcher Ms Nthabiseng Seroba also made a presentation on the Socio- economic impact analysis on the Bill.

Recognising the importance of the Bill and the need to ensure consultation with relevant stakeholders, the Committee sent out individual notices to the following targeted stakeholders:

- Land Access Movement of South Africa
- Legal Resources Centre
- Lawyers for Human Rights
- Socio Economic Rights Institute of South Africa
- Wits Law School
- Centre for Applied Legal Services
- Black Sash
- Section 27 Public Interest Law Centre
- South African Human Rights Commission
- Commission for the promotion and protection of rights
- The Commission for Gender Equality
- Banking Association of South Africa
- South African Institute of Race Relations
- Webber Wentzel
- Woman's Legal Rights Centre
- Royal Houses of (Beck Korana Royal Kingdom, Griqua Royal House, King Khalo Jacob Hlalele, Contralesa, Inkosi Mahlangu, Senior Traditional Leader of Amantungwa and Senior Traditional Leader of Bhungane

In addition to the above; the Committee issued out several notices on different media platforms calling upon members of the public to make inputs on the Bill. This was done in fulfilling its constitutional mandate to facilitate public participation when processing this Bill. These notices were published as follows:

Newspapers

- Beeld (19 April 2023)
- Sowetan (19 April 2023)
- City Press (19 April 2023)

Social Media Platforms

- Tweeter- 18 April; 9 May; 14 May; 5 June 2023
- Facebook- 18 April; 9 May; 14 May; 5 June 2023
- Instagram- 18 April; 9 May; 14 May; 5 June 2023
- GPL Website- 18 April; 21 April; 30 June 2023

Radio Promotions

- Jozi FM & SAFM (24-26 April 2023) and outside broadcast at the Venue, interviews on the 25th April 2023
- Lesedi FM & Thetha FM (5-9 May 2023) and outside broadcast at the Venue, interviews on the 9th May 2023.
- EK FM (10-14 May 2023) broadcast at the Venue, interviews on the 12th May 2023.
- RSG and Pheli FM (26-31 May 2023) and outside broadcast at the Venue, interviews on the 31st June 2023.
- Radio, Moretele FM (26-31 May 2023) and outside broadcast at the Venue, interviews on the 1st June 2023.
- Motsweding FM and Westside FM (01-05 June 2023)

Round Table Discussion and Public Hearings

This was to enable the Committee to request members of the public and other stakeholders to make written or oral comments/submissions on the Bill, following that, the Committee convened a round table discussion at the GPL's Auditorium and the purpose of which was not only to educate stakeholders on the contents of the Bill but also receive inputs on the Bill.

Moreover, the Committee hosted five public hearings around the province. Public hearings were conducted in the following areas:

- Friday, 21st April 2023 Committee Room C Gauteng Provincial Legislature

- Friday, 28th April 2023: City of Johannesburg Metropolitan Municipality at the Gauteng Legislature City Hall
- Monday, 15th May 2023: Sedibeng Region at Vereeniging City Hall
- Thursday, 1st June 2023: Ekurhuleni Region at Duduza Multi-Purpose Centre
- Monday, 5th June 2023: Tshwane Region at Akasia Community Hall
- Friday, 9th June 2023: Westrand Region at Mogale City Centenary Hall

Subsequent to that, the Committee also convened a session with the Gauteng Traditional Leaders on the 11th August 2023, at Duduza Multipurpose Centre (Ekurhuleni).

Moreover, a call for the submission of written comments was also made in various platforms and the closing date for submissions was 12 July 2023 and for the Traditional Leaders was 23 August 2023, however, the Committee accepted submission that were received after the closing dates.

3. OVERVIEW OF THE PUBLIC HEARINGS

In general, the Committee was not satisfied with the few attendances of Stakeholders in all public hearings save for hearing with the Traditional Leaders, noting the importance of the Expropriation Bill. This was as a result of budgetary constraints, experienced by the Committee and GPL where a number of invited stakeholders had to be reduced.

The Portfolio Committee deliberated and adopted this Report and the Negotiating Mandate of the Expropriation Bill [B-23-B-2020] on Friday, 22 September 2023.

4. PRINCIPLES AND DETAILS OF THE BILL

This Bill in essence has five objectives. It seeks to make provision for the expropriation of property for a public purpose or in the public interest. It seeks to regulate the procedure for the expropriation of property for a public purpose or in the public interest. Furthermore, it seeks to make provision for instances where nil compensation may be just and equitable for expropriation in the public interest.

5. SUBMISSIONS

The Committee noted with concern, the submissions received during most of the public hearings were not relevant to the Expropriation Bill but rather fell within the scope of the Restitution of Land Rights Act or spoke to service delivery issues. Unfortunately, most of those submissions could not be considered in the formulation of the negotiating position of the Gauteng Provincial Legislature (GPL)

There was a strong rejection of clause 12(3) which proposes expropriation with nil compensation. Even those stakeholders who expressed some support for the Bill still strongly rejected clause 12(3).

Further, there was a concern raised in the early public hearings that traditional leaders in Gauteng were not properly consulted on this particular Bill. On that basis, the Committee decided to extend the hearings and held a separate public hearing on 11 August 2023 at Duduza Multipurpose Centre for traditional leaders. Amongst those leaders who attended were representatives from the Beck Korana Royal Kingdom, Griqua Royal House, King Khalo Jacob Hlalele, Contralesa, Inkosi Mahlangu, Senior Traditional Leader of Amantungwa and Senior Traditional Leader of Bhungane.

Most of these representatives again rejected the Bill and emphasised restitution of land to the “rightful owners”. Other stakeholders who made written submissions included individuals, Royal Houses, Congress of Traditional Leaders of South Africa Contralesa, Democratic Alliance (DA), Economic Freedom Fighters (EFF), VF Plus, Banking Association of South Africa, Commission for Gender Equality and AFRI Forum.

6. SUMMARY OF THE STAKEHOLDER’S SUBMISSIONS MADE DURING THE PUBLIC HEARINGS

Clause	Comment
The definition of “Court”	has a reference to “intangible property” in sub-clause c. Intangible property is not clearly defined and this should be facilitated either by introducing its own definition or the definition of property must be amended to exclude intangible property.
Definition of “Disputing Party”	In earlier versions of the Bill, the definition of disputing party contained reference to a “counter-offer”. This has been removed in the final version of the Bill and should be added back.
Definition of “Holder of right”	The definition of holder of right should also include a registered right in addition to an unregistered right.
Definition of “expropriation”	It is unclear whether the definition of expropriation includes temporary expropriation.
“Compulsory acquisition of property”	The words “compulsory acquisition of property” should be replaced by “the curtailment of rights of an owner in property”, and the addition of “through (i) compulsory acquisition of property as a form of direct expropriation and (ii) custodial taking or regulatory taking of property in the case of indirect expropriation.
“Public purpose”	The definition of public purpose is vague and must be amended to make it clearer.
“Valuer”	The definition of “valuer” is vague and must be amended particularly in respect of “suitably qualified”.

Clause 3(3)	Clause 3(3) is redundant as it is covered by 3(2) and is contrary to the purpose of the Bill as it does not directly relate to “public purpose” or “public interest”.
Clause 3(5) (a)	<p>Clause 3(5)(a) should be amended such that payment of compensation should be a pre-requisite of vesting.</p> <p>“The ownership of the property vest in the relevant organ of state <u>on the date on which transfer of ownership of the property is registered by the relevant deeds registry office in terms of the Deeds Registries Act (1937);</u>”</p> <p>The words “of expropriation” should be deleted.</p>
Clause 3(5)(b)	<p>Possession should only be given on transfer of ownership to the relevant organ of state and not prior to that.</p> <p>Proposed amendment:</p> <p>“<u>Possession of the property will vest in the relevant organ of state on the date of registration of transfer of ownership of the property in the name of the State.</u>”</p>
Clause 5 (1)	Clause 5(1) must be amended so that is not only objective assessments are considered when determining value but also subjective factors such as financial and sentimental value. This is necessary since land is an emotive issue and, in this scenario, the owner is being ‘forced’ to give up their land.
Clause 5(5)	It is recommended that longer timeframes be included throughout the Bill that are more realistic than the commonly referenced ‘20 day period’.
Clause 5(7)	<p>Greater specificity is required in terms of the standards of damage and the quantum of damages. A “reasonable standard” is also not sufficient. Any damage should be repaired as close to the original state as possible, which indicates that a prior assessment of the property should be done prior to work commencing. Damage should not only apply to tangible assets but should include elements such as impacts on livestock and ability to farm.</p> <p>Proposed amendment:</p> <p>“<u>If the property in question is damaged through an act contemplated in subsection (2), an affected person may deliver written demand to the expropriating authority and the expropriating authority must confirm within 15 days receipt as well as the acceptance of notification. If the expropriating authority has accepted the written demand, the expropriating authority must repair and/or restore the property to the state it was in prior to the damage taking place within the confines of the National Environmental Management Act (1998) and any other environmental legislation with similar requirements or compensate the owner to repair and/or restore the property to the state it was in prior to the damage</u></p>

	<u>taking place or compensate for the damage within 90 days after the above notification date.</u> **
Clause 6(3)	The Bill should be amended to include clear consequences should the municipal manager fail to adhere to the 20 day timeframe provided for response.
Clause 7(2)(h)(i)	Clause 7(2)(h)(i) and (2) should be amended to clarify that the objections lodged via this clause carry weight in terms of the final decision to expropriate and are not provided merely for consideration. It is suggested that this provision should be included in the investigation phase, as it will have more impact there.
Clause 7(3)	Expropriation of land has additional specific requirements e.g., sending the notice of expropriation to additional government departments. This is not the case for assets other than land and this should be included.
Clause 9	Date of vesting of the property should be upon payment of compensation and not just the date of expropriation
Clause 12	<ul style="list-style-type: none"> • Clause 12(3) provides for 5 specific circumstances under which expropriation can take place without compensation. This is not a complete and exhaustive list, because the caveat “but not limited to” appears before the 5 circumstances and opens the door for any other circumstances that can be justified by the expropriating authority. This clause is also <i>ultra vires</i> the requirement specified in section 25(2)(b) of the Constitution that the time and manner of compensation must have been approved by a court. This clause eliminates this consensus and usurps the authority of the judiciary as it pre-determines the amount of compensation to be nil. Clause 12(3)(a) amounts to interference by the state in private property rights in that it prevents owners of land from speculating in their asset, which is no different from speculating in the stock-market. • The wording of section 25 of the Constitution does not allow for expropriation without compensation. It reads that “property may be expropriated only in terms of law of general application, for a public purpose or in the public interest; and subject to compensation” (own emphasis) which is agreed upon or decided by a court. It does not require extensive interpretive logic to conclude that the use of the word and in section 25 requires the expropriation of property to comply with the qualification for public purpose or interest, and compensation payable. • No construction of section 25 can ignore the meaning of the word “and”, which makes payment of compensation a peremptory requirement for expropriation to be constitutionally permissible. • section 12(3) of the Bill is unconstitutional and should be removed

<p>Clause 12(1)</p>	<p>This clause provides for the factors to be considered when determining compensation. Clause 12(1)(d) refers to “the market value of the property”. The term “market value” is not defined in this Bill.</p> <p>It is recommended that “market value” as defined in the Property Valuation Act (2014) be used and that this section of the Bill should specifically detail that the Office of the Valuer General is responsible for determining the market value of property intended for land reform as envisaged by s12(1)(a) of the Property Valuation Act. In keeping with this objective, stakeholders should be able to challenge the valuation especially if the land parcel is mortgaged.</p>
<p>Clause 12(3)(c)</p>	<p>This cannot be sufficient cause because the failure to exercise control over an asset may not be the fault of the owner. This will encourage land invasion.</p>
<p>Clause 12(3)(d)</p>	<p>There is concern that this clause could result in perpetual expropriation where the beneficiary of expropriation/land reform could subsequently have their land expropriated for nil compensation.</p>
<p>Clause 12(3)(e)</p>	<p>This is not sufficient cause to expropriate without compensation. Risks or hazards can be rectified without having to resort to expropriation.</p>
<p>Clauses 12(3)(a) – (e)</p>	<p>A proposed amendment to this clause is as follows: Clauses 12(3)(a) – (e) be removed and replaced by:</p> <ul style="list-style-type: none"> (a) Where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration; (b) Where previously expropriated property is expropriated for a new purpose from an organ of state or state department and compensation has already been paid.
<p>Clause 12(5)</p>	<p>Section 12(5) be amended to at least include that the state must consider outstanding balances due to mortgage holders when determining the amount of compensation. It is not fair to leave citizens with debt for properties that they no longer own.</p>
<p>Clause 13 (general comment)</p>	<p>The clause provides that interest will accrue from the date the expropriating authority, or the person whose behalf the property was expropriated, takes possession of the expropriated property. It is recommended that interest shall accrue from the date a Notice of expropriation is published or a decision to expropriate is taken and communicated to affected persons.</p> <p>It is recommended that the compensation payable must include damages for all losses resulting from the expropriation. Such damages would include moving costs, any loss of income, and any outstanding balance on a mortgage bond which the compensation paid would otherwise not be enough to cover. The finance interest rate should be that levied by the mortgagee and not that of the PFMA.</p>

	<p>Amend this clause to include the underlined wording:</p> <p><u>Interest, at the rate determined from time to time in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) or at the rate determined from time to time on such terms that have been agreed upon between the expropriated owner or expropriated holder and the mortgagee, from the date the expropriating authority, or the person on whose behalf the property was expropriated, takes possession of the expropriated property, accrues on any outstanding portion of the amount of compensation payable in accordance with section 12 and becomes payable in the manner contemplated in section 15</u></p>
<p>Clause 13(a)</p>	<p>If there is a dispute on the amount payable, the expropriated owner or expropriated holder cannot issue a VAT invoice. It would be iniquitous to deprive it of the ability to recover interest if the claim were resolved in its favour.</p> <p>Recommendation</p> <p>It is recommended that clause 13(a) be amended to include the underlined wording: “... is not regarded as an outstanding amount, <u>provided that if the expropriated owner or expropriated holder disputes the amount of compensation it shall be entitled to issue a provisional tax invoice for the amount of compensation offered without prejudice to its right to dispute the amount of compensation offered by the expropriating authority</u>”</p>
<p>Clause 13(b)</p>	<p>With the issuing and the acceptance/collection of cheques having ceased, effective from 31 December 2020, how is payment by prepaid registered post expected to be effected? It is proposed that payment via electronic funds transfer (EFT) would minimise opportunities for fraud given the obligation on banks in terms of the Financial Intelligence Centre Act, 2001 etc.</p> <p>Recommendation</p> <p>Delete reference to “prepaid registered post” from s13(b).</p>
<p>Clause 14(1)</p>	<ul style="list-style-type: none"> • Earlier versions of the Bill included the option of a counter-offer. This has been removed from the final version and should be added back. • (1) may request the expropriating authority, in writing, to provide [reasonable] <u>full and further particulars about the offer of compensation and the reason for the intended expropriation of that particular property and particulars so requested</u>
<p>Clause 14(2)</p>	<p>More support should be provided to the claimant in requesting particulars of the offer of compensation from the expropriating authority. It is costly for the claimant to approach a court and a more affordable mechanism should be provided.</p>

<p>Clause 15(3)</p>	<p>Possession of an expropriated property can pass to the expropriating authority before consensus is reached on compensation. This clause is heavily weighted in favour of the State and should be amended.</p> <p>The right to possession must take place simultaneously with payment of compensation or at least on receipt of sufficient undertakings securing payment of compensation. The Constitutional Court has held that compensation is not a pre-requisite to expropriation. The Constitutional Court has also held that eviction following expropriation may not take place unless agreed upon between the parties to the expropriation or in the absence of agreement, under court supervision. In order to protect the rights of all parties, we propose that the right to possession must take place on receipt of sufficient undertakings securing payment of compensation. This will still meet the Constitutional Court’s findings of not unduly burdening the State but also provide a level of protection to the expropriated owner/holder or the holders of registered rights that that compensation will be paid</p> <p>This clause should be deleted or modified to indicate that if payment has not been agreed to or paid prior to the passing of possession, then the right to possession can only take place on receipt of sufficient undertakings securing payment of compensation.</p>
<p>Clause 16(1)</p>	<p>There is no guarantee that the mortgage will be settled, and a scenario could exist where the compensation paid is insufficient to extinguish the mortgage. Banks wield financial power and could secure their portion before the balance is allocated to the owners. This could leave the owners with nothing.</p> <p>Recommendation</p> <p>Amend s16(1) and s16(2) to include the underlined wording and delete the wording indicated by strikethrough:</p> <p>(1) ... immediately prior to the date of expropriation, encumbered by a registered mortgage <u>in favour of a secured creditor or, if the property is land, subject to a deed of [sale] alienation as contemplated in the Alienation of Land Act, 1982 (No. 68 of 1981),</u> the expropriating authority may not pay out any portion of the compensation money except to such person and on such terms as may have been agreed upon between the expropriated owner or expropriated holder and the mortgagee or buyer concerned, as the case may be, after the claimant or the <u>expropriated owner or expropriated holder and the mortgagee or buyer has notified the expropriating authority of the agreement.</u></p> <p>(2) <u>The claimant or the</u> expropriated owner or expropriated holder or the mortgagee or buyer, as the case may be, must notify the expropriating authority.</p>

<p>Clause 17(4)(a)</p>	<p>This clause is in contravention of the Deeds Registries Act (1937) as there is no mention of the need to obtain a clearance certificate. The expropriated owner will therefore be unfairly prejudiced if there is failure on the part of the municipality to accurately calculate this amount.</p> <p>It is recommended that a clearance certificate should be obtained.</p>
<p>Clause 17(4)(b)</p>	<p>This contradicts subsection (c) as it states the owner will only be liable up to date of possession, and this section states that the owner will be liable up to registration/transfer.</p> <p>Recommendation</p> <p>It is submitted that the use of language be consistent to avoid confusion and misinterpretation. Section 17(4)(c) Possession is currently used as the date for determining the amount of outstanding rates and utility charges to the municipality.</p> <p>It is recommended that the Bill also uses the date of registration to determine the amount of outstanding rates and utility charges to the municipality. This section should also clarify the amount of arrears payable i.e. It should align to the provisions of s118(1) of the Municipal Systems Act that caters for arrears payable for purposes of effecting transfer of the property.</p>
<p>Clause 17(4)(c)</p>	<p>If the date of possession is later than the expropriation date, the Municipality may hold the former owner responsible for municipal costs. This is patently unfair.</p>
<p>Clause 18</p>	<p>For the stable functionality of the property mortgage market (to the benefit of borrowers and lenders), it is imperative that there are clear provisions in the Bill indicating that mortgagees will be compensated in full in relation to the outstanding amount owed and set out in a statement of outstanding balance, regardless of the amount of compensation to be paid to the owner of the property who is not the mortgagee and without the need to conclude an agreement between the mortgagee and the expropriated owner.</p> <p>It is proposed that if the amount of compensation offered to the owner, who is not a mortgagee or buyer, is lower than the outstanding amount owed to the mortgagee or buyer, the expropriating authority ought to make good the difference.</p>
<p>Clause 19(8)</p>	<p>Any dispute of lack of finality as to the amount of compensation should halt the expropriation process until finalised.</p>

	<p>Section 19(8) of the Bill is unconstitutional insofar as it allows for expropriation before the amount of compensation is either agreed upon or determined in a court of law, as it amounts to an unconstitutional form of “self-help” by the state to take property without judicial oversight.</p>
<p>Clause 20</p>	<p>Clause 20 of the Bill gives government the power to expropriate property on an urgent basis, which suspends the operation of the procedural requirements of sections 5, 6 and 7 of the Bill. Section 20 shortens the process by allowing government to exercise the right to expropriate and offer compensation within 30 days of giving notice.</p> <p>The first problem with section 20 of the Bill is the proviso that if the expropriated owner disputes either the expropriation or the compensation tendered by government, the dispute is resolved in terms of section 19 of the Bill. This is the “expropriate now, argue later” aspect of the Bill which is, in our view, unconstitutional. We argue that the same argument can be used to declare section 20(5) unconstitutional.</p> <p>It is important to note the use of the word or in section 20(2) in that only the second ground makes provision for judicial oversight. The logical inference is that section 20(2)(a) – urgent expropriation in a national disaster – requires no judicial oversight. We repeat the same concerns as above regarding the lack of judicial oversight.</p> <p>Clause 20(2)(a) is also of concern, given that South Africa was in a national state of disaster for over 750 days since it was declared on 15 March 2020.³⁴ It recently entered into a new state of disaster, which is still ongoing. If this Bill were an act, government would have had unchecked expropriation powers for almost one calendar year, without seeking judicial oversight in the expropriation of citizens’ property and without complying with the procedures set out in sections 5, 6 and 7 of the Bill. The experience of states of disaster in our recent past shows that these can be extended multiple times, and there is a great risk that these powers might be abused.</p>
<p>Clause 20(9)</p>	<p>If the expropriating authority determines that it wants to proceed with a permanent expropriation, the process should begin anew once the possession has been restored. This will ensure that the owner is not prejudiced and the State not placed in a superior bargaining position.</p>
<p>Clause 20(10)</p>	<p>Greater specificity is required in terms of who determines the standard and quantum of damage to the property.</p>

	The inclusion of payment as an alternative to repair is welcomed, however, only were initiated by the owner by way of a letter of demand. Owners will be better protected if the provision is updated to dictate that ‘the Expropriating Authority may either repair or compensate’.
Clause 21(1)	Public interest is too vague. The purpose of withdrawal must be extremely important and there should be a very specific set of circumstances in which withdrawal can take place.
Clause 21(3)(a)	This clause appears to be a contradiction of clause 2(b) since ownership only takes place when property is registered. So, clause 2(b) applies and 3(a) is superfluous. If a mortgage is revived because of withdrawal, the prevailing market price may be different from the original mortgage. It would be prejudicial to the owner who might have to pay a higher mortgage than what he originally paid.
Clause 22(3)	The inclusion of email as a form of communication has been omitted and reliance is placed on post, hand delivery or facsimile. Email must be included.
Clause 25(2)	It is concerning that in terms of clause 26(1)(d), the Minister may determine the quantum of the final penalty. This leaves too much discretion to the Minister and the value of the penalty should either be defined in the Bill or alternately be defined in a separate framework.
Clause 27	Who decides whether a breach is material or immaterial? The onus should be on the party that did not follow the correct procedure to seek condonation. If the owner thinks something is a material aspect and the authority disagrees, then the matter should go to court and the party who did not comply must initiate the court process. It is recommended that if the parties are unable to reach agreement, the matter should be determined by a court, with the onus being on the non-compliant party to initiate the court process.
Clause 27(1)(ii)	A technical amendment is proposed where the words “rights and duties” are amended to “rights, interests or duties”. This circumvents the need for both rights and duties to be affected for this provision to allow for changes to be made.
General Comment	Proposals to remedy this flawed Bill should include at an absolute minimum, the distinction between direct and indirect expropriation, as well as the removal of the possibility of nil compensation being paid in the case of expropriation of private property. If nil compensation is to be approved, it should be applicable only to government owned land that is not required for service delivery and for which no compensation has been paid. The other category of property that should be subject to nil compensation is property that has previously been expropriated, which is then expropriated for a new purpose and compensation has been paid. In addition, amendments need to be considered to the other matters raised in this document.

7. POSITION BY THE GAUTENG PROVINCIAL DEPARTMENTS

In line with the GPL Rule 250 (3) (a) the Committee sought the views of the relevant Member(s) of the Executive on the Bill. In this regard the Gauteng Department of Infrastructure Development and Property Management, support the Expropriation Bill B23B-2020 for the following stated reasons:

- 7.1 The Act does not have retrospective effect therefore, will not affect any notice that had already been delivered prior to its commencement unless the parties agree to apply the Act;
- 7.2 Extension of the right to expropriate to be in line with the constitution as it is for a public purpose or in the public interest;
- 7.3 Expropriation is not limited to land;
- 7.4 Ownership of the expropriated property vests in government on the date of expropriation;
- 7.5 Clarifies the issue of compensation and what can be considered or excluded in the calculation thereof;
- 7.6 Clarifies that expropriation can be without compensation which is in line with the limitations clause in the Constitution;
- 7.7 Sets out clear procedures to be followed which includes the intergovernmental consultative process; and
- 7.8 Deals with how disputes are to be dealt with by the parties including mediation.

8. SOCIO-ECONOMIC FINANCIAL IMPLICATIONS

The Committee observed that the Bill, to a certain extent, will have financial and economic and social implications.

8.1 Financial Implications

- 8.1.1 Pertaining to the financial implications of the Bill, the different spheres of government will have to financially plan for processing expropriation and implement all three phases of expropriating land. However, it is important to note that due to the openness of the evaluation to expropriate process, there is possibility that the government might face litigation for expropriation.

8.2 Socio – economic Implications

The Committee further observed that:

- 8.2.1 while there has been much emphasis on the socio-economic implication of passing the legislation there is also a broad socio-political implication. While the argument to protect the economy is based on reassuring investors and stability, it does not recognize that lack of transformation might also have socio-political implication that will reproduce the instability and investor confidence it seeks to protect.
- 8.2.2 According to Economic and Business lobby groups the possibility of expropriation without compensation has already started discouraging essential investment in the country. It is argued

that the destruction of all property rights will cut South Africa off from the developed world which will result into instability, uncertainty, and job losses.

- 8.2.3 Much of the contestation is within the agricultural space in which the sector is not confident that the government is equipped to implement the legislation in manner that will not affect economic prospects.
- 8.2.4 The Expropriation Bill has been dubbed the property clause which has been argued to be a Neo-Liberal extension of the 1913 Land Act. Fundamentally, in South Africa the expropriation bill does not only relate to property but also relates to wealth distribution, retribute and equity in South Africa.
- 8.2.5 According to Agrisa, the likely outcomes of expropriating agricultural land for less than market value is severe, including increased food insecurity and unemployment due to reduced investment in local agriculture. This view is supported by a report of Agriculture, Land Reform and Rural Development Minister which state that, while 1,672 farmers were allocated 1.73 million hectares, the Land Acquisition and Redistribution programme experienced challenges from the underutilisation of the land because of a lack of money for input and operational costs, inadequate infrastructure, lack of market access for what farms produce, the inability to pay rent and for basic services like water and lights, also land invasions by neighbouring communities.
- 8.2.6 The President has continuously regurgitated that the Amendments in the Act does not target well established productive Land but rather it seeks to address land that is currently not being utilised. Despite this reinforcement, business lobbyists are concerned that expropriation with no compensation might be abused by the state in the future as in the case of Zimbabwe which would result in economic regression for South Africa.
- 8.2.7 It is evident that business forums are concerned with how the potential investors might interpret the expropriation with no compensation, in which this perception might result in investors withdrawing from investing in South Africa.
- 8.2.8 Furthermore, that the government does not have the capacity to implement the legislation in accordance which might result in state resources being wasted and government facing litigations, but moreover, there is a concern, that despite the President reassurance, the legislation of expropriation with no compensation might be abused.
- 8.2.9 The amendment of the Bill has been welcomed by social justice groups, who believe that this is a step in the right direction towards resituate and wealth redistribution. There has been a number of disputes regarding the racial inequalities that continue in this country coupled with the inability for the government to address socio-economic injustices employed during Apartheid.

- 8.2.10 Activists have argued that wealth production in many instances was a product of socio-economic injustice where land was stolen and forced removals in which families were never compensated for. The existing inequality and lack restitution have resulted in resurgence of riots and racial clashes in South Africa in which economic rating urgency have highlighted as an indicator of socio-political instability.
- 8.2.11 It is believed that government can use this opportunity to address issues of inequality through ensuring that marginalised groups who have been socially, economically, and politically excluded may now have access to spaces that can make them active participants. The expectation is that the government would use this clause to transfer valuable land to marginalised communities, especially in urban areas, where many black people still live in the peripheral of the cities. However, activist were concerned that marginalised community in rural areas might fall victim to expropriation clause. It is argued that the term public interest and unused land/unproductive land is relative. There is a population of people who still use land for subsistence, informal traditional business and cultural activities but the government has overlooked these communities.
- 8.2.12 This was evident when the activist from the Khoisan where protesting at the Union Building demanding that the state reinstates their land and resources for cultural traditional purposes.

9. CONCLUSIONS AND RECOMMENDATIONS

In terms of section 5 of the Mandating Procedures of Provinces Act No. 52 of 2008, the Committee will confer authority on its provincial delegation to the NCOP of parameters for negotiation when the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure considers this Bill after tabling and before consideration of final mandates; and may include proposed amendments to the Bill.

This Committee report has been prepared in accordance with rule 163 of the GPL Standing Rules. Furthermore, in line with the constitutional court judgment in *Mogale v Speaker of the National Assembly & Others*¹ all submissions have been attached to this Report which will accompany the negotiating mandate.

10. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Portfolio Committee on Infrastructure Development and Property Management **supports** the principle and details of the Expropriation Bill [B23B-2020] subject to the consideration of the proposed amendments and inputs as raised by the stakeholders and general public in **Part 6** of this Report.

(CCT 73/22) [2023] ZACC 14 (*Mogale*).