



REPORT OF THE PORTFOLIO COMMITTEE ON PUBLIC WORKS, ROADS AND TRANSPORT, COMMUNITY SAFETY, SECURITY AND LIAISON. EXPROPRIATION BILL [B23B-2020]

1. INTRODUCTION

The Speaker of the Mpumalanga Provincial Legislature (“the Legislature”) referred the Expropriation Bill [B23B-2020] (“the Bill”) to the Portfolio Committee on Public Works Roads and Transport, Community Safety, Security and Liaison (“the Committee”) for consideration and report back to the House, in accordance with legal prescripts and the Rules and Orders of the Legislature.

The Constitution of the Republic of South Africa (“the Constitution”) vests provincial legislatures with powers to consider, pass, amend or reject Bills (law-making) and to facilitate public involvement in the legislative and other processes of the Legislature. These law-making and public participation powers are specifically derived from s114(1) and 118(1) of the Constitution. Further, the Constitutional Court has held on to numerous cases that a provincial legislature has a constitutional obligation to facilitate public involvement when considering Bills before it.

Therefore, the Committee conducted public hearings to solicit public inputs and views from stakeholders and members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

- To provide for the expropriation of property for a public purpose or in the public interest.
- To regulate the procedure for the expropriation of property for a public purpose or in the public interest, including payment of compensation.
- To identify certain instances where the provision of nil compensation may be just and equitable for expropriation in the public interest.
- To repeal the Expropriation Act, 1975 (Act No. 63 of 1975); and to provide for matters connected therewith.

3. METHOD OF WORK

The Committee was briefed on the Bill by the National Council of Provinces (NCOP) permanent delegate, Hon H Boshoff on Thursday, 23 March 2023, together with the National Department of Public Works. She mentioned that the State Law Advisers are furthermore of the opinion that it is necessary to refer the Bill to the National House of Traditional Leaders since it may impact on the customs of traditional communities.

The Committee conducted public education sessions initially and public hearings thereafter. Publishing of invitations that made a call for Public Comments through online, other media platforms, including the Legislature Facebook page to solicit inputs / comments from members of the public in April and May 2023. Interested parties and stakeholders were also invited to submit written comments on the Bill to assist the Committee during deliberations that will give effect to the negotiating mandate and ultimately the final mandate.

Invitations to public hearings and the submission of written comments on the Bill were placed in the Mpumalanga News; Mpumalanga Press; Witbank News and Khanyisa Weekly News which are the major newspapers circulating in the province.

The Public Hearings were conducted as follows:

DATE	VENUES	TIME
Tuesday, 25 April 2023	Nkangala District: Victor Kanye Local Municipality; Bram Fischer Community Hall.	10:00 – 13:00
Wednesday, 03 May 2023	Ehlanzeni District: Nkomazi Local Municipality; KaMhlushwa Community Hall.	10:00 – 13:00
Tuesday, 23 May 2023	Gert Sibande District: Dipaliseng Local Municipality; Balfour Community Hall.	10:00 – 13:00
Tuesday, 06 June 2023	Nkangala District: Dr JS Moroka Local Municipality; Council Chamber (King Mabhoko III).	10:00 – 13:00
Wednesday, 07 June 2023	Nkangala District: Thembisile Hani Local Municipality; Council Chamber (King Makhosoke II).	10:00 – 13:00

The Committee thereafter met on Wednesday, 01 November 2023 to consider the draft report and the Negotiating Mandate on the Bill.

4. INTERACTIONS BY THE COMMITTEE WITH THE PERMANENT DELEGATE AND THE NATIONAL DEPARTMENT OF PUBLIC WORKS.

Honourable H Boshoff, indicated to the Committee that, as the Member of the National Council of Provinces representing the Mpumalanga Province, she is mandated to present the Bill to the Committee. Hon Boshoff who was accompanied by the National Department of Public Works, indicated that the Bill that is under consideration adheres to legal prescripts and is in order. She further indicated that the Bill was previously not accepted due to lack of consultation by the National Department as well as to the House of Traditional Leaders. She assured the Committee that she will take all the inputs from the Honorable Members to the National Council of Provinces (NCOP).

5. OVERVIEW OF THE EXPROPRIATION BILL [B23B—2020]

- The Expropriation Act, 1975 is currently law according to the transitional provisions in Schedule 6 to the Constitution, 1996.
- This 1975 expropriation law has been interpreted by the courts in harmony with the expropriation provisions of section 25 of the Constitution (property clause).
- However, the Expropriation Act, 1975 was not enacted in accordance with the property clause.
- The Expropriation Bill [B23B-2020], on the other hand, is purposefully developed to give effect to the property clause.
- Thus, the property clause serves as the foundation for the substantive and procedural aspects of the Bill which is simultaneously aligned to the tenets of the Constitution.
- The Bill governs administrative and judicial expropriations. Administrative law consequently covers administrative decisions to expropriate. Expropriation in terms of the Labour Tenants Act, 1996 is a form of judicial expropriation.
- Expropriations in terms of this Bill will be mainly administrative in nature.
- The following administrative law principles and rules will inevitably apply to the Bill;
 - Decisions must be procedurally, fair, and rational. This implies the right to be heard or to make representations before a decision is taken;
 - Decisions must be reasonable, considering all relevant factors and considering all affected interests to reach an outcome; and
 - Decisions must be permitted by law of general application.
- The Constitution permits expropriation of property only for a public purpose or in the public interest.

- Public purpose expropriation includes the building of a dam, road, or hospital in terms of legislation.
- Public interest expropriations include the state's commitment to land reform and reforms to bring about equitable access to natural resources.
- The Bill sets the framework for public purpose and public interest expropriations.
- Other functionaries are empowered to expropriate for purposes relevant to their respective functional areas of legislative competence. e.g., Education.
- Clause 3 of the Bill empowers the Minister responsible for public works to expropriate for public works-related purposes. Other expropriating authorities derive those powers from their own legislation.

6. INSTITUTIONS CONSULTED FOR COMMENTS ON THE BILL

The Provincial Department of Public Works, Roads and Transport; Department of Health and Social Development; Department of Education; Department of Human Settlements; Department of Community Safety, Security and Liaison; Department Agriculture, Rural Development, Land and Environmental Affairs; Department of Cooperative Governance and Traditional Affairs (Provincial House of Traditional and Khoi-san Leaders); South African Human Rights Commission (SAHRC), Provincial Treasury, The South African Local Government Association (SALGA); Victor Khanye Local Municipality (Nkangala District); Dipaliseng Local Municipality (Gert Sibande District); Nkomazi Local Municipality (Ehlanzeni District); King Mabhoko III (Dr JS Local Municipality), King Makhosoke II (Thembisile Hani Local Municipality; Traditional Healers Organisation.

Written submissions were received from the following:-

- amaNdebele akwaNdzundza King's Advisory Council
- Provincial House of Traditional and Khoi-san Leaders

7. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL

During public hearings, Members of the Committee explained the purpose of the public hearing thoroughly. The legislative processes and timeframes for processing the Bill through the relevant channels of the NCOP were also explained.

Members of the public and the stakeholders were made to understand their constitutional rights in relation to them making inputs in the processing of Bills by the Legislature. The Bill was also presented in the local languages of all the relevant communities. The Committee, the Department and the Legal Services Section of the Legislature also responded to questions of clarity raised after the Bill was presented. Members of the public and stakeholders who were present at the public hearings generally supported the objectives of the Bill.

7.1 Inputs by Nkangala District - Victor Kanye Local Municipality

- There are frustrations from people who are forcefully evicted from their farmhouses, yet not compensated, some are expropriated without following proper procedures.
- The Bill is not about expropriation of land without compensation, then it will not benefit them.
- The Government must consider expropriation of land that will be utilise for good purposes and benefiting the community.
- Stakeholders and Members of the Public who were present at Victor Kanye Local Municipality supported the Bill.

7.2 Inputs by the Nkangala District: Dr JS Moroka Local Municipality (King Mabhoko III)

- Appreciated the consultation and mentioned that there must be proper processes followed and consultation during the expropriation period with implicated families. King Mabhoko III supported the Bill, it will be beneficial to many communities for economic development.
- Stakeholders and Members of the Public who were present at Dr JS Moroka Local Municipality supported the Bill.

7.3 amaNdebele akwaNdzundza King's Advisory Council

In their submissions the following provisions of the Constitution, the following were quoted:-

Section 25(2) to (7):

(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.

- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-
- (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section-
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources;
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially 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.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

In terms of the above requirements set out by the Constitution in terms of expropriation without compensation, there appears to be many stumbling blocks to which eventually makes it near impossible for expropriation of property without compensation from happening. It is along these lines that the King's Council seeks a way that will resonate with the needs and wishes of the masses of blacks and Africans in general as the subjects of the King's Council.

It is imperative to look at section 25(2) and 25(3) as it spells out conditions for expropriation according to the Constitution. In terms of section 25(2)(a), "for a public or in the public interest; and.." This is the fundamental point to be reconsidered particularly since in areas falling under the Council's authority, the "public interest" of the amaNdebele akwa Ndzundza, the King's subjects, is centered on that which the King's Council considers of common good.

In terms of the Constitutional definition for a public or public interest refers to the state, which represents its citizens. It is upon this definition that the King's Advisory Council makes its point, without being obscured how it covers the role of Traditional Authority as it represents a group of citizens not individuals.

This submission represents the public interest of the amaNdebele akwa Ndzundza and all the Amakhosi (Senior Traditional Leaders) Councils under the Kingship of Ingwenyama Mabhoko III throughout the Republic of South Africa. AmaNdebele akwa Ndzundza, through the Advisory Council of INgwenyama Mabhoko III are of the view that the Expropriation Bill missed a part that must be played by traditional councils throughout the country in relation to the public interests of their subjects as custodians of history, culture and traditional rites and values of their indigenous groups. As custodians of their peoples' origins, they are better placed to oversee the fulfilment of the land needs and wellbeing of their people.

They, therefore, should be at the forefront of processes that seek to provide redress for the injustices of the past as it relates to land as has been done through the 1913 Land Act and the 1950 Group Areas Act that brought about forced removals and the homeland systems. There is no need to bring back the past, but as a Traditional Authority, the issue of land tenure is surely a sore that needs to be healed. They therefore firm view that it is only fair that all land that has been repossessed through illegitimate means be registered back.

The case of land occupied by communities still registered with private owners instead is an anomaly that must be corrected to speed up land tenure upgrading, in consultation and with the approval of the Kings and the Senior Traditional Leaders.

The issue of gazetting land areas under traditional authorities but not registering those areas under the Traditional Authorities is disempowering. Land was placed under the custody of Traditional Authorities -in trust - instead of registering them under those Traditional Authorities, a position which has not changed even with our new legislation, and denies people land ownership.

7.4 Inputs by Ehlanzeni District - Nkomazi Local Municipality

- Government must enforce laws that will make processes easy during the expropriation processes.

- Urban Areas are highly evaluated as compared to the Rural Areas, yet the Rural expropriation will be more on economic development/ income generating.
- There must be proper processes followed during the exhumation and consultation with implicated families.
- Stakeholders and members of the public who were present at Nkomazi Local Municipality supported the Bill.

7.5 Inputs by the Provincial House of Traditional and Khoi-san Leaders

The Mpumalanga House of Traditional Leaders and Khoi-san Leaders mentioned that the Bill must:-

- Clarify which movable property will be subjected for expropriation;
- Afford AmaKhosi the opportunity to expropriate;
- Entitle AmaKhosi to harvest and access natural resources located within their area of jurisdiction;
- Clearly articulate the role of Restitution (Land Claims) regarding SALGA on expropriation;
- Include AmaKhosi to be consulted prior intended expropriation, including public participation;
- Articulate how the border disputes over land will be resolve in instances where the Municipalities found encroaching over tribal land;
- Elaborate the targeted land for expropriation;
- Indicate the role of AmaKhosi regarding the land to be expropriated that affects the tribal area of jurisdiction;
- Confer powers not to expropriate land already within AmaKhosi jurisdiction;
- Indicate how the government will settle all outstanding land claims:
- Give authority to AmaKhosi to expropriate unused land;
- Address restoration of land taken from AmaKhosi;
- Set clear conditions that will be utilised to expropriate land within the area of Jurisdiction of AmaKhosi and;
- If published, be in all official languages recognised in Constitution of the Republic of South Africa, 1996

7.6 Inputs by Gert Sibande District - Dipaliseng Local Municipality

- Many South Africans have occupied/invaded land without Tittle Deeds, if the Bill is approved a lot of people will not benefit from the Expropriation Bill.

- The Government has a lot of unused land and should consider expropriation of land without compensation.
- The Bill should be able to assist/ protect people who stay on farms.
- There is a lot of land that has potential of business opportunities and investments, yet Government will consider expropriation where there are fully fledged/developed communities.
- Stakeholders and Members of the Public who were present at Dipaliseng Local Municipality supported the Bill.

8. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

- Public Education sessions were conducted regarding the Bills prior to the Public Hearings.
- Oral and written submissions that were made by the stakeholders and members of the public were considered accordingly.
- Other submissions that do not address or relate to the content of the Bill will be referred to the relevant Committees within the Legislature, Provincial Departments, Local Municipalities, and other relevant structures for further processing.
- The Committee further noted that some inputs made by members of the public and stakeholders will be addressed through Regulations once the Bill has been passed.
- The Stakeholders and members of the public who were present in all Districts during the public hearings, generally supported the Bill.

9. RECOMMENDATION AND VOTE OF THE LEGISLATURE

The Portfolio Committee on Public Works, Roads and Transport, Community Safety, Security and Liaison after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to vote in favor of the Bill without any proposed amendments.

10. CONCLUSION

The Chairperson would like to take this opportunity to thank the Members of the Portfolio Committee for their active participation and constructive contributions during public hearings. The Chairperson further extended a word of gratitude to the NCOP Permanent Delegate, and Hon H Boshoff for the efforts in ensuring that the Committee meets its obligation and the support staff who contributed to the success of the whole procedures.



HON N MAHLANGU

CHAIRPERSON: PORTFOLIO COMMITTEE ON PUBLIC WORKS, ROADS AND
TRANSPORT, COMMUNITY, SECURITY AND LIAISON

03 November 2023

DATE