**AFRICAN NATIONAL CONGRESS**

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# ORAL SUBMISSION ON THE EXPROPRIATION Bill [B23 – 2020]

# TO THE

# PORTFOLIO COMMITTEE ON PUBLIC WORKS AND INFRASTRUCTURE

# 7 SEPTEMBER 2021

# Submission done by Cdes Safoora Sadek, Tim Dunn, Senzeni Mphila and Busi Nxumalo on behalf of the Gaby Shapiro Branch.

## INTRODUCTION (Cde Safoora Sadek)

On behalf of the ANC Gaby Shapiro branch operating in the W.Cape Province, we thank you for this opportunity to make this oral submission on Bill 23 of 2020, namely the Expropriation Bill.

Needless to say the ANC Gaby Shapiro Branch unambiguously support the enactment of this Bill into Legislation as soon as is practically possible. Our support is based on two key factors.

One is that this Bill gives effect to our Constitutional obligations (Section 25 in particular) for a just and equitable process to restore the dignity of our people in addressing access to property and land, and the expropriation of such without compensation, as is applicable.

The second is that there is an urgent need to repeal the existing Expropriation Act No 63 of 1975. Promulgated during the era of apartheid rule of our country, Act 63 serves the expropriation interests of the then government of the day, which as we all know was based on a system of racial inequalities that deprived the vast majority of our people their political, social, economic and human rights. This is an important fact to remember because it clearly shows that the Expropriation of Land with or without compensation was practiced in the days of apartheid and continues to be allowed under this old apartheid law.

While supporting the Bill, we believe that it needs to be strengthened in various areas but for the purpose of this submission, we will focus on key issues of principle with my three fellow comrades and I leading on each of them.

To kickstart, we propose the following amendments be made to the PREAMBLE of the Bill:

* We remove the first part of the Preamble that states “whereas Section 25 and then repeats the definition of property as is word for word from the Constitution - because the amendment of Section 25 is being undertaken as a separate process, is ongoing and if the wording of Section 25 is amended in the future, this Bill will also have to amended. This can waste time and delay implementation because legislative processes are lengthy in time.
* We add two (2) clauses to the Preamble, namely:
  + WHEREAS the lack of available land for implementation of government’s socio-economic development programmes impedes the delivery of a just and democratic South Africa to all South Africans.
  + WHEREAS Article 2 of the United Nations Declaration on the Rights of Indigenous Persons (UNDRIP) which includes States providing redress, through effective mechanisms, for the restitution of cultural, religious and spiritual property taken from indigenous peoples without their free, prior and informed consent in violation of their laws, traditions and customs.

## PURPOSE OF THE BILL (Mx Busi Nxumalo)

On the PURPOSE OF THE BILL, we are of the view that purpose is not explicit enough on why Bill23-2020 is being considered for enactment. We therefore propose that the purpose as currently worded is deleted and replaced with the following:

This Expropriation Bill No 23 of 2020:

* Repeals the Expropriation Act (No. 63 of 1975) that resulted in disproportionate distribution of, and inequitable access to land;
* Gives effect to the following Sections of the Constitution of the Republic of South Africa (Act No. 108 of 1996):
  + Section 25 that provides for the redress of past racially discriminatory laws or practices pertaining to land;
  + Section 33 (1) that provides for lawful, reasonable and procedurally fair administrative action; and
  + Section 34 that provides everyone with the right to have any dispute resolved in a fair public hearing before a court or another independent and impartial tribunal or forum;
* Enables Expropriation of land in accordance with the Constitution which is the supreme law of the Republic of South Africa;
* Enables government to expropriate land:
  + for the purpose of public good and interest which results in equitable socio-economic development and growth of the Republic of South Africa;
  + with nil compensation, under circumstances defined in Chapter 5 (12) (3) in the Bill, for public interest and for public purpose; and
* Provides for matters connected therewith.

## DEFINITIONS OF PROPERTY, PUBLIC PURPOSE AND COURT (Mr Tim Dunn)

The main thrust of our proposed amendments in terms of the definitions of property, public interest and court is based on the principles that this Expropriation Bill:

* deals with the issue of expropriation of land and landed/immoveable property and not with personal property such as cars, pensions, bank accounts, etc. Nor does it deal with intellectual property such as copyright.
* Explains that expropriation with or without compensation will be solely for the purpose of socio-economic development described as “public interest” and “public purpose” in the Bill.
* When enacted, the implementation of the Bill will require collaboration and co-ordination with various sister departments across all spheres of government.

**DEFINITION OF PROPERTY**

Currently, the definition of property in the Bill is “property” means property as contemplated in Section 25 of the Constitution. As stated by Cde Safoora in her introduction, tying the definition to Section 25 of the Constitution which is under consideration for amendment, could delay the enactment of this Bill. Thus we propose that the definition as it stands should be deleted and replaced with the following: “property” means, for the purposes of this Act, immoveable property that is suitable and appropriate for purposes of public good and/or in public interest.

D**EFINITION OF PUBLIC PURPOSE**

The current definition of “public purpose” in the Bill is: “public purpose” includes any purposes connected with the administration of the provisions of any law by an organ of state.

We propose that this be amended to read as “public purpose” MEANS any purposes connected WITH ADVANCING THE EQUITABLE SOCIO-ECONOMIC DEVELOPMENT OF THE COUNTRY. Amending the definition in this way will close the gap for endless litigation and court cases on whether the expropriation was indeed connected to administration of law and how the administration serves a public purpose or is in public interest. It will also ensure that property is not expropriated for corrupt or other nefarious purposes other than its main purpose which is to expropriate land and other immoveable property in pursuance of the country’s land reform and socio-economic development priorities.

DE**FINIITON OF COURT**

The definition of the word “court” must provide for and include the “land court”. As we know the land court specialises in disputes that arises from the application of laws underpinning South Africa’s land reform initiatives. When this Expropriation Bill becomes an Act, it will automatically become one of the Acts that will inform the work of the Land Court.

We also believe that clause (c) under the definition of court must be deleted because it speaks to intangible property which we understand is not within the remit of this Bill. Clause (c) currently says “in the case of intangible property, the court…etc”. Intangible property, using a legal definition, refers to non-physical substances such as brand identity, intellectual property, Patents, copyrights and licenses. Because this Bill focuses on the expropriation of property and land and does not deal with intangible property – clause c must be removed. We have specific laws and policies that deal with intangible property, and these should be used for court challenges on such matters. We also believe that retaining Clause (c) on intangible property can have the unintended consequence of eroding domestic and foreign investor confidence, as well as impede innovative economic growth and development.

## DEFINITION OF EXPROPRIATING AUTHORITY (Mr Senzeni Mphila)

We believe that the definition of expropriating authority should be amended in terms of the words “organ of state” and the word “person”.

Currently the definition says “expropriating authority” means an ORGAN OF STATE or PERSON empowered by this Act or any other legislation to acquire property through expropriation.

Our understanding is that legally expropriation is an act of government. If our understanding is correct then it stands to reason that it would be wrong to empower “a person” to perform the task of expropriation. Empowering a person to do this can lead to various wide-ranging legal disputes and/or to wide-ranging abuse of powers by an individual even if empowered to do so by this Act.

We also strongly believe that empowering all organs of state of all three spheres of government to serve as expropriating authorities will lead to disputes, territorial battles, delays, confusion and possible even create opportunities for corruption and expropriation for nefarious gain when implementing the Act. Additionally, having several expropriating authorities can lead to judicial confusion because people can question which authority is actually in charge.

Thus, we propose that a single expropriating authority or agency must be established by the Minister of Public Works. The Minister can then delegate administrative powers and responsibilities for expropriation to the authority or agency, and organs of state must submit written substantiated requests to the single authority /agency to expropriate property and land they have identified for socio-economic development, on their behalf.

Having a single authority or agency will ensure better co-ordination and uniformity of administrative processes as well as reduce red-tape. Thus it can ensure speedy delivery and provide for a single point of accountability and reporting.

If our proposal of a single expropriating authority is considered, the definition as it currently stands will have to be re-defined and a section will have to be added that explains the process, composition, scope of work, reporting, accountability, term of office, etc of the single entity.