

# **REPORT OF THE PORTFOLIO COMMITTEE ON PUBLIC WORKS ROADS AND TRANSPORT, COMMUNITY SAFETY, SECURITY AND LIAISON ON EXPROPRIATION BILL [B4D-2015]**

## **1. INTRODUCTION**

The Speaker referred the Expropriation Bill, [B4B-2015] (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 the legal prescripts and the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution, the Legislature has a mandate to facilitate public involvement in the law making, oversight and other processes of the legislature. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public and organized stakeholders on the above-mentioned Bill.

## **2. OBJECTIVES OF THE BILL**

The purpose of the Bill is to;

- Provide for the expropriation of property for a public purpose or in the public interest and to provide for matters connected therewith.

## **3. METHOD OF WORK**

- a) The Committee was briefed on the Bill by the National Council of Provinces (NCOP) permanent delegate, Hon SG Mthimunye, a member of the Select Committee on Economic and Business Development, on the 15<sup>th</sup> of March 2016.

- b) The Committee conducted public hearings in order to solicit inputs/comments from members of the public. Interested people and stakeholders were also invited to submit written comments on the Bill in order to assist the Committee during deliberations that gave effect to the negotiating mandate.
- c) Invitations to public hearings and the submission of written comments on the Bill were placed in the Daily Sun and Mpumalanga News which are the major newspapers circulating in the province.
- d) The Public hearings were conducted on Friday, 15 April 2016, from 09h00 – 13h00 in the following Districts.

DISTRICT	VENUE	No. of Attendees
Ehlanzeni	KaMaqhekeza Community Hall – Nkomazi Local Municipality	201
Nkangala	Vezubuhle Community Hall Thembisile - Hani Local Municipality	133
Gert Sibande	Ezamokuhle Community Hall – Dr Pixley ISaka Seme Local Municipality	325

- e) The Committee thereafter met on the 28<sup>th</sup> of April 2016 to consider the draft report, the inputs from all stakeholders and the negotiating mandate on the Bill and such mandate was duly submitted to the NCOP.
- f) On the 9<sup>th</sup> of May 2016 the committee considered the amended version of the bill [B4D-2015] and thereafter its final mandate on the Bill and such mandate was duly submitted to the NCOP.

#### **4. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL**

The following stakeholders were invited by the Committee to attend the public hearings:

- ❖ Community Members

- ❖ Mpumalanga Landbou/ Agriculture
- ❖ Department of Public Works, Roads and Transport
- ❖ Department of Agriculture, Rural Development and Land Administration
- ❖ Executive Mayors of District Municipalities
- ❖ Ward Committees
- ❖ South African Sugar Cane Growers Association.

Written submissions were received from Mpumalanga Landbou/Agriculture, the South African Institute of Race Relations and Mpumalanga Provincial House of Traditional Leaders.

Members of the Committee presented the Bill during the public hearings in English and the local language applicable in that particular district. The stakeholders who were present at the public hearings generally supported the Bill and in addition made submissions, which included the following:

**a) Definition of “disputing party” and “expropriation”**

- i) That the definition of “disputing party” should be deleted and replaced as follows:

*A “disputing party” means an owner or holder of a right who has received a notice of intention to expropriate in terms of Section 7(1) and who does not accept the validity of the proposed expropriation, and/or the amount of compensation offered in that notice, and/or the legal authority of the expropriating authority to evict him or her from his or her home without a court order obtained under Section 26 of the Constitution.’*

- ii) That the definition of “expropriation” should be deleted from the Bill as the courts should be allowed to decide on a case by case basis on whether a specific government action amounts to expropriation or not.

**b) Fair and equitable compensation**

- i) Compensation should be fair and equitable to all parties and the determination of the amount should not be left to the state.
- ii) Compensation must be based on market value and must also include moving costs and any loss of income from the business premises.
- iii) Eighty percent of the compensation must be paid to the owner prior to the expropriating authority taking possession of the property.

**c) Expropriating authority**

The Bill in its current form allows the expropriating authority to be the coach, referee and player. It was therefore recommended that a court order should first be obtained wherein the High Court will consider the reasons for expropriation, prior to the issuing of the notice of expropriation.

**d) Valuation**

The Bill should put an obligation on the expropriating authority to be transparent in the calculation of proposed compensation by serving the owner with the full valuation report and a complete breakdown of all discounts applied to the evaluation. The focus should be on the loss that the owner suffers, not acquisition by government organs.

**e) Custodianship versus ownership**

Agricultural land should be excluded from any category of assets that state may become the custodian of (expropriate), since land forms the basis of agricultural financing.

**f) Payments**

- i) The Bill should compel the state to pay in full well in advance of the date of transfer and be liable to penalties, interest on late payments on all its obligation, which should include compensation for consequential loss.

- ii) Clause 17 (3) should be replaced with the obligation to pay compensation in full before or on the date on which the right to possession of property will pass to the expropriating authority as intended in clause 8(3)(f).

**g) Payment of amount offered as compensation**

The Bill should include the following provisions:

- i) Clause 17(3): Property which is subject to a notice of expropriation served on the owner or the holder of a right may not be sold, mortgaged, or otherwise disposed of without the prior written consent of the expropriating authority, and any sale, mortgage or other disposal of such property, which is entered into in breach of this sub-section, has no legal force or effect.
- ii) Clause 17(4): If compensation has been paid to the owner of property under sub-section (1) and the ownership of the property for which such compensation has been paid is not transferred to the expropriating authority on the date of expropriation set out in the notice of expropriation, then the owner is unjustly enriched by the payment of compensation and must repay to the expropriating authority the full amount received as compensation, together with interest (at the prime rate plus two percentage points) on any outstanding balance, until the full amount owing to the expropriating authority has been paid.
- iii) Clause 17(5): If compensation has been paid to the holder of a right in a property under sub-section (1) and the right is not expropriated and transferred to the expropriating authority on the date of expropriation set out in the notice of expropriation, then the holder is unjustly enriched by the payment of compensation and must immediately repay to the expropriating authority the full amount received as compensation, together with interest (at the prime rate plus two

percentage points) on any outstanding balance, until the full amount owing to the expropriating authority has been paid.

#### **h) Traditional leadership**

The Committee received the following inputs from the Mpumalanga Provincial House of Traditional Leaders; indicating that

1. Clause 6 of the bill excludes Traditional Leaders and the Traditional Institution; MPHTL (we) therefore felt that the clause needs to be amended so that the role of Traditional Leaders is clarified.
2. In case any decision on expropriation of land that falls under the jurisdiction of a Traditional Leader or individual the institution of Traditional Leadership must be consulted accordingly.

### **5. OBSERVATIONS AND FINDINGS BY THE COMMITTEE**

- a) The Committee noted that the Bill seeks to ensure consistency with the Constitution and to provide for a uniform procedure for dealing with expropriation of property in the country.
- b) The Committee further noted that submissions by the stakeholders and members of the public were generally in support of the Bill and that the proposals that were made were considered by the Committee. However, the proposals made were already substantively covered in the Bill.
- c) The Committee therefore resolved that the Province support the Bill without further amendments.

### **6. RECOMMENDATIONS**

- a) **The Portfolio Committee on Public Works, Roads and Transport, Community Safety, Security and Liaison after considering the Bill confers on the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) the mandate to vote in favour**

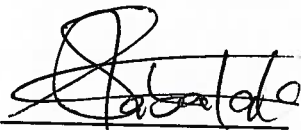


of the Expropriation Bill [B4D-2015] taking into account the input and observations noted in this report.

## 7. CONCLUSION

The Chairperson wishes to thank all members of the public and stakeholders for their worthwhile participation in the public hearings and for the inputs or comments they have made.

We further extend a word of gratitude to Members of the Committee, the NCOP Permanent Delegate, Hon SG Mthimunye for the efforts in ensuring that the Committee meets its obligation and the support staff who contributed to the success of the whole process.



**HON GC SHABALALA**

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

10/05/2016  
**DATE**

