Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE

Submission to the Department of Public Works

on the

EXPROPRIATION BILL

(B – 2019)

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'Participating in Public Policy'

1. Introduction

The Parliamentary Liaison Office of the Southern African Catholic Bishops' Conference welcomes the opportunity to comment on this legislation.

The Catholic Church holds to the principle of the *universal destiny of all goods* and thus, though private property must be respected at all times, and there can be no arbitrary dispossession of property, all forms of property ownership exist within a context where "the right to private property must never be exercised to the detriment of the common good" (Pope Paul VI, *Populorum Progressio*, #23).

We acknowledge that it is necessary, from time to time, for the State to expropriate property for public purposes or in the public interest. It is vital, though, that in doing so the rights of the property owner/holder as disturbed as little as possible; that the procedures followed are fair and even-handed; and that proper compensation is paid (other than in certain circumstances, as discussed below).

We believe that the proposed legislation will, for the most part, enhance the ability and capacity of the state to secure property necessary for the implementation of just and fair policies for the public good; however, we also have some reservations about the proposed changes. We detail our below the clauses which we support as well as those about which we have concerns.

2. Specific points

2.1. Clause 2: Application of the Act

We strongly support the principle set out in clause 2(1) that expropriation may not happen arbitrarily, and that it must be in the public interest or for a public purpose.

It is important to emphasise that expropriation – which is in effect a drastic limitation of the right to ownership of property – should be a last resort; it should not be undertaken for reasons of convenience or when other, less intrusive options are available. We therefore support the provision in clause 2(3) to the effect that expropriation may not be carried out unless there has first been an attempt to acquire the property by agreement on reasonable terms.

2.2. Clause 5: Investigation and gathering of information for purposes of expropriation

Disputes over expropriation are usually due to disagreements about the value of the property concerned. One of the easiest and most efficient ways of determining the value of a property (land or land plus improvements) that is to be expropriated, is to ascertain the municipal valuation of that property in terms of section 46 of the Local Government: Municipal Property Rates Act 6 of 2004. Municipal valuations are determined by the State (in the form of municipalities). It would be anomalous – and, we suggest, unfair – if another branch of the State (the expropriating authority) were to arrive at a valuation lower than the municipal valuation. This would have the effect that a property owner would have been paying rates on a value higher than that for which he or she is to receive compensation.

We suggest, therefore, that the following be inserted after clause 5(1)(b):

"(c) the current municipal rates valuation, if any, of such property";

and that the following be inserted in clause 7(6)(b) after the words "expropriating authority":

"which amount shall not be lower than the current municipal rates valuation, if any, of the property,"

The effect of these two insertions would be to ensure that no-one was given compensation by the State in a lower amount than that on which he or she had been paying rates to the State. Furthermore, it would mean that property owners would know beforehand that the valuation of property was an independent process and not one that was determined by the party that was to benefit from the expropriation.

2.3. Clause 12: Determination of Compensation

The addition of sub-clause 12(3) to previous versions of this Bill provides helpful clarity as to the circumstances under which expropriation without compensation may occur. Regarding the five circumstances listed in 12(3), we mention the following:

a) Labour tenants – Section 3 of the Land Reform (Labour Tenants) Act 3 of 1996 gives labour tenants the right to occupy land if they were labour tenants on 2 June 1995. It may be worth stipulating a similar cut-off or threshold date in the Expropriation Bill in order to make it clear that it is not the Bill's intention to promote labour tenancy as a method for people to acquire land via expropriation without compensation.

It would also be helpful to indicate that it is not the labour tenants who will receive no compensation, but the land owner. This could be clarified by adding the words "and subject to the provisions of section 2(2) of the said Act" to the end of a sub clause 12(3)(a).

b) Land held for speculation – it is perfectly legal to acquire and hold land for speculative purposes. To effectively 'punish' this form of commercial activity by singling it out as a ground for expropriation without compensation could well violate the principles of legality and administrative justice. It must also be mentioned that South Africa's current municipal rates regime values properties as 'land plus improvements', thereby encouraging speculation in land – in effect, very low rateable values are placed on land. Lastly, it might prove extremely difficult to establish whether a piece of land is being held speculatively, or simply for a period of time prior to development or other use.

c) Expropriation of land owned by a state entity – practically speaking, this is merely a transfer a land from one organ of state to another.

d) Abandoned land – there can be no objection to the expropriation without compensation of land that has been abandoned. Proving such abandonment may, however, be difficult.

e) Land benefitting from state subsidy or investment – it seems to be fair that, where the state has already subsidised the acquisition or improvement of land, and the land's current value is less than the amount of the subsidy, no compensation should be paid.

2.4. Clause 15: Offers of Compensation: Legal Redress

We note that clause 15 now includes a revised sub-clause (3), which provides for mediation or legal proceedings under clause 21 to apply by default if the property owner does not respond to a notice of expropriation or if the claimant does not accept the compensation offered. These provisions, read with the procedure set out in clause 21(2) have the effect that it is up to the expropriating authority to refer the matter to court. This differs from the situation under the previous version of this Bill (B4 -2015), which in its clause 15(3) placed the onus to commence court proceedings on the claimant. We support the new provisions – given the state's resources, it is fair and appropriate that it should bear the burden of commencing legal proceedings.

2.5. Clause 21: Mediation and Determination by Court

In our submission on the previous version of this Bill we suggested that it should make provision for an accessible and affordable mechanism for mediation, along the lines of the CCMA in labour disputes, or the various independent ombudsmen that exist for the professions. This would be beneficial to all, but especially ordinary citizens who lack the means to litigate privately.

We therefore strongly support the introduction of clause 21(1), which provides for settlement of compensation disputes by mediation. However, no mention is made of the establishment of a suitable mediation tribunal or facility. We urge that further attention be given to this point.

2.6. Time periods

Various clauses refer to time periods within which owners of property selected for expropriation are required to submit documents, lodge objections, etc. As already noted, expropriation is a drastic inroad in to the right to property; in addition, it will often be a matter of some complexity for an owner to prepare submissions and objections relating to an expropriation. It may be necessary for him or her to consult lawyers, financial advisers, estate agents, and so on. While a well-resourced

or wealthy owner may well be able to mount an objection within a month, this will not be the case for owners who are not familiar with legal and other processes, or who lack the money to consult with professional advisers.

We submit that a period of 30 days, as contemplated for example in clause 7(2)(g) and (h) and 7(4), is too short and that it would effectively discriminate against poor or unsophisticated owners. The same applies to the 20-day period contemplated in clause 14(1); this is hopelessly too short, especially when clause 14(1)(c) mentions that a 'professional report' should be provided. Such reports can take much longer than that to be drawn up. The fact that clause 25 empowers the expropriating authority to extent these time periods "on good cause shown" and upon application in writing, does not, we submit, remedy the harm that may be caused to disadvantaged owners; they may, indeed, not even be aware of the possibility of such an extension.

We submit that it would be far better to provide for more realistic time periods in the first place.

3. Conclusion

We wish the Department well in its further development of this Bill, and we look forward to engaging further when it is tabled in Parliament.

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