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Questions over bill's property definition

Concerns that Expropriation Bill's vague, broad description could include intellectual property

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VARIOUS entities have called on Parliament to provide a better definition of property when it comes to the expropriation without compensation proposals – especially whether it covers intellectual property – when the Expropriation Bill returns to Parliament in February.

As it stands, the bill includes intellectual property as part of a vague description of property, which could mean anything from patents, trademarks and copyright to art.

The Expropriation Bill seeks, among other things, to provide for the expropriation of property for a public purpose or in the public interest. Also, to regulate the procedure for such expropriation of property, including payment of compensation, identifying certain instances where the provision of no compensation may be just and equitable for expropriation in the public interest, and to repeal the Expropriation Act of 1975.

The executive director of Freedom of Religion South Africa (Forsa), Michael Swain, said they shared the concerns of many other constituencies that the bill, as it stands, covers any form of property which included intellectual property.

"It is no good having a law which is very broad, and describing it as any form of property means that the impact will be so much wider."

In its submissions to Parliament, Forsa said they were concerned that, since the bill intended to deal with the expropriation of immovable property (specifically land) and appropriate affected land-related property rights and not movable and intellectual property, the definition of property must be corrected.

The organisation said vague terms prevent legal certainty and are open to abuse.

"The definition of property is wide, which may include intellectual property. The broad definition would need another level of consideration and deliberation to ensure that fundamental constitutional rights are protected because the Constitution knows no hierarchy of rights," Forsa said.

The Banking Association of South Africa (Basa), in its submissions to Parliament, said the definition of property that can be expropriated should be restricted to tangible property.

"Intellectual property must be protected," said Basa, adding that vague property, public interest and public pur-

pose definitions created policy uncertainty.

The Minerals Council South Africa said it was concerned at what it described as a grey area that needed to be clarified, namely the lack of protection of unregistered rights, especially as the process to register these under the Mineral and Petroleum Resources Development Act could take years.

Parliament media officer Malentsoe Magwagwa said the select committee on transport, public service and administration, public works and infrastructure had resolved to finalise the Expropriation Bill in February 2024 to allow for further consultation.

The committee could not proceed with the Expropriation Bill at its meeting last week, as the Department of Public Works and Infrastructure requested further consultations on clause 20, which deals with matters around urgent expropriation.

"The committee resolved to finalise the bill in February 2024 to allow for the integrated bill to be sent to the provinces for the conferral of final mandates," Magwagwa said.

The committee chairperson, ANC MP Mosimane Mmoiemang, said the issue of the definition of property was expected to be discussed next year and the committee was still busy with the negotiating mandate of the bill after various provinces had made their input.

"This is not a final mandate from provinces and we are considering the different input from them in relation to the definitions."

"The guiding tool is Section 25 of the Constitution, but intellectual property is part of real rights and these discussions are ongoing," Mmoiemang said.

He said issues of intellectual property fall under the "copyright regime", the Department of Trade and Industry, and he said the topic would be further ventilated when that department discussed the bill.

"Mining rights will come under the Department of Minerals and Energy and property in the form of land will fall under the Department of Public Works." DA committee member Willie Aucamp said the broad description of property was problematic "with a car, house and land being lumped together".

"It needs to be ironed down to specifics, but some want everything to be state-controlled."

"We are calling for an open society where the government has less of a say," Aucamp said.

CELEBRATION



SETH Williams from Sydenham, who is counting down to Christmas, was delighted when he saw this Christmas themed sculpture at the Durban Botanic Gardens. | DOCTOR NGCOBO Independent Newspapers

TARIFFS

Consumers should brace for higher electricity costs

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CONSUMERS in South Africa should brace for exorbitant electricity prices by the end of 2025 after the high court paved the way for Eskom to increase tariffs by a cumulative 33.8% in the next two financial years.

The National Energy Regulator of SA (Nersa) on Friday welcomed the Gauteng High Court, Pretoria, judgment dismissing the challenge against the revenue determination and tariff approval of Eskom's fifth Multi-Year Price Determination (MYPDS).

The high court dismissed the judicial review applications on Nersa's revenue determination and tariff approval of Eskom's MYPDS application for the 2023/24 and 2024/25 financial years.

The first tariff increase in the MYPDS of 18.65% came into effect on April 1 for direct Eskom customers and July 1 for municipal users, and a second tariff hike of 12.74% is earmarked from April 1, 2024 for Eskom direct users, followed by municipal consumers from July 1, 2024.

The judgment followed applications by the DA and the SA Local Government Association (Salga), respectively, to review Nersa's decision on Eskom's MYPDS revenue application for the 2023/24 and 2024/25 financial years, made in January this year.

The DA wanted the MYPDS decision declared invalid and suspended while giving Nersa six months to remedy the situation.

The party argued that the court should declare the need to increase electricity tariffs exponentially was due to the government's failure to take expert advice, plan, or take action to meet the country's electricity needs.

Salga also rejected the increases following consultations with municipalities.

It argued that the decision was irrational and that certain considerations were not taken into account.

Salga argued that the hikes would push municipal customers to alternative energy, negatively affecting municipal revenue, saying municipalities were particularly concerned about their ability to purchase bulk electricity at the new tariffs.

However, in its ruling the high court found in favour of Nersa.

"When all is considered and the detailed and extensive reasons furnished

FESTIVE SAFETY

Cele deploys thousands of new officers

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POLICE Minister Bheki Cele has expressed confidence that the additional 10 000 police officers who will be on the ground this week will deal a "heavy blow" to crime this festive season.

This, as police strategic interventions such as Operation Shanela saw police go head-to-head with alleged hard-core criminals with more than 62 criminals killed during shoot-outs with police.

Thousands of suspects have also been arrested for various serious crimes with the latest incident being yesterday morning when a high-profile taxi boss allegedly linked to various crimes in and around Cape Town was arrested at a hiding place in Pretoria.

He will appear in the Pretoria Magistrate's Court today facing charges of possession of unlicensed firearm and ammunition.

Speaking at a police ministry festive season media briefing yesterday about continuing and planned policing inter-

ventions, Cele said police have declared war on anyone or any groupings who opt to use violence for their criminal gains.

He said they were ready for criminals including cash-in-transit opportunists who will go to any lengths to get their hands on money.

"With just 15 days to go before Christmas Day, the police ministry and police management would like to assure the nation that all hands are on deck for the police to protect citizens and their properties."

"In the coming days, the bite of the police will be stronger, as we welcome into the police service 10 000 new officers."

"The police recruitment office successfully processed 600 000 of these applications and embarked on a rigorous recruitment drive."

"We are now in the second phase of enlisting 10 000 police officers, who will be graduating from various police academies throughout the country in the coming week."

"This means there will be more boots on the ground come December 15 when the last passing out parade takes place in Ishwane," he said.

According to Cele, police trainees have for the past months been stationed at police academies across the country and hard at work in street survival courses, firearm, law and physical training during their completion of the basic police development learning programme.

"We have no doubt, the new members will provide a much-needed boost to the current policing numbers and amplify our law enforcing efforts."

These officers will be deployed to sanitise the streets and increase the footprint of the police in all nine provinces.

"Their deployment will be prioritised, especially in high crowd zones and areas of entertainment and leisure this holiday season."

"Over time and with guidance, these officers will no doubt be a valuable addition to the service and build on the capacity of the service," said Cele.