



public works

Department:  
Public Works  
REPUBLIC OF SOUTH AFRICA

## **MEDIA STATEMENT**

### **Minister of Public Works briefs the Portfolio Committee on the new Expropriation Act**

**CAPE TOWN** – Today the National Minister of Public Works, Ms Thoko Didiza, presented the proposed new Expropriation Bill to the Public Works Portfolio Committee, marking the beginning of a formal process by Parliament to adopt the new Bill for the purposes of discussions, consultative engagements and consolidation before it is passed into law, possibly in the first half of 2008.

The proposed new Bill is set to replace the old Expropriation Act of 1975 which predates the Constitution and frankly put, might be inconsistent with the spirit and provisions of the current Constitution of South Africa particularly in the areas determining the basis for the expropriation.

In its redrafted form, the Bill seeks to align the Expropriation Act with the Constitution and to provide a common framework to guide the processes and procedures for expropriation of property by organs of state, by providing for, among others, the following: -

- (1) the extension of the purposes for which property may be expropriated from the narrow term of public purpose to include expropriations in the public interest. Expropriation in the public interest, for instance, provides government with a tool to achieve its commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources;

- (2) all affected parties to be notified of a contemplated expropriation, to afford such parties an opportunity to raise objections and make representations to the expropriating authority, before a decision to expropriate is taken. The expropriating authority must give consideration to all submissions and must attempt to reach an agreement with persons whose rights and interests may be adversely affected, before deciding to expropriate;
- (3) the expansion of the scope of protected rights to provide for compensation for both registered and unregistered rights. In terms of the Expropriation Act, only the holders of registered rights and certain unregistered rights are eligible for compensation upon expropriation. Section 25 of the Constitution, however, does not distinguish between registered rights and unregistered rights. It would thus be unconstitutional to terminate unregistered rights without compensation;
- (4) the payment of just and equitable compensation to persons affected by expropriations, with such compensation reflecting an equitable balance between the public interest and the interests of those affected. Whilst the market value of expropriated property is a predominant factor in the Expropriation Act, the Constitution does not give undue weight to any single factor over others, but requires consideration of all relevant factors, including -
  - the current use of the property;
  - the history of the acquisition and use of the property;
  - the market value of the property;
  - the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - the purpose of the expropriation;

- (5) expropriating authorities and affected parties to exchange technical reports and other relevant information, in endeavouring to reach agreement on compensation. In the absence of agreement, the expropriating authority shall make a determination on compensation. In the event that the expropriated owner or holder of a right does not accept such determination, he/she may approach the court for a review of the process followed by the expropriating authority in making such determination. Should either party not accept the ruling of the court, it would have the right to appeal;
  
- (6) the establishment of the Expropriation Advisory Board to advise all expropriating authorities on all aspects of expropriation, including the determination of compensation. The Board will also render advice to organs of state on the fair value of immovable property when the state acquires property other than through expropriation, or disposes thereof. The Bill proposes that the Minister be empowered to establish as many such Boards, as may be necessary in different geographical areas, to ensure effective and efficient services to all expropriating authorities and organs of state;

Whereas the old Act narrowly focused on the market value as the sole determinant for the negotiations preceding expropriation, the proposed new Bill, in line with the constitution, takes a holistic view and considers other relevant factors such as the current use of the property, the history of the acquisition, the extent of the direct state involvement and subsidy in the acquisition and beneficial capital improvement of the property, among others. The above is contrary to the paranoia raised by certain sectors of organized farming that government seeks to downplay market value in the expropriation negotiations.

Of importance, is the fact that the new Act would also promote the tenets of good governance and administration by consolidating current disparate pieces of legislation and processes of expropriation (about 140 of them) across all spheres of government including parastatals, ensuring that the power to expropriate would be applied uniformly, constantly and free from haphazard decisions which might infringe constitutional rights and freedoms.

The Bill has been passed by Cabinet hence today's briefing of the Portfolio Committee by the Minister. In preparation, the Department of Public Works had convened two separate workshops in February 2008 to canvass comments and other views on the draft policy document issued in November 2007. Both the organs of the state and the private sector including the farmers' organizations were on separate occasions given an opportunity to engage with the document.

Following today's briefing of the Portfolio Committee by the Minister of Public Works, Parliament is expected to spearhead parliamentary and public discussions on the proposed Bill and to that end, Parliament has adopted a scheduled timeframe for national consultations which will be taken to all the provinces.

Ends

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