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JOINT STATEMENT BY THE INTER-MINISTERIAL COMMITTEE ON LAND REFORM

Expropriation Bill, 2020 submitted to Parliament for introduction – Bill set to replace Expropriation Act of 1975 that is inconsistent with the Constitution.

In his 2018 State of the Nation address, President Cyril Ramaphosa committed to the acceleration of land redistribution programme to redress historical injustices of land dispossession and displacement that will avail more land for cultivation towards food security, rural development and poverty reduction whilst equally responding to equitable spatial planning and settlement.

The announcement was followed by the appointment of the Land Reform Inter-Ministerial Committee chaired by Deputy President David Mabuza in July 2018 to give effect to this process.

Subsequently, in September of the same year, the President appointed an Advisory Panel to provide a unified perspective on expropriation for the land in the wider context of persisting land inequities and unsatisfactory land and agrarian reform and urban land development and distribution.

In the final report, the advisory panel made a proposal for an amendment of the constitution that clarifies that expropriation without compensation be necessary in limited circumstances. The Panel noted that the Restitution Act of 1975 preceded the 1996 Constitution and does not align with the transformative mandate of the

Constitution and proposed speedy replacement of Act 65 of 1975, by finalizing the Expropriation Bill.

It is in this context that today, we are announcing the publishing of the Expropriation Bill of 2020 as gazetted on 09 October 2020. The Bill is part of the work of government in ensuring that a comprehensive land redistribution for agricultural purpose, human settlements and industrial development is implemented.

Deputy President, David Mabuza said: “The publication of this important bill, is a cogent indication that government is indeed at work to realize redress and fulfil the aspirations of the people to have an equitable society. It is a recognition of the urgency required to address the injustices of the past and restore land rights in a responsible manner, whilst ensuring that food security is maintained; that equitable spatial justice is achieved; and that continuation of investment to expand our industrial base is secured”.

Today, as the Inter-Ministerial Committee on Land Reform chaired by Deputy President David Mabuza, we are updating the media and public on the current status of the Expropriation Bill, 2020. This Bill is set to replace the current Expropriation Act of 1975. The Bill is framework legislation that spells out clearly how and when expropriation can take place.

CURRENT PROCESS:

Department of Public Works and Infrastructure Minister, Patricia de Lille said: “I wrote to the Speaker of the Parliament of the Republic of South Africa and the Chairperson of the National Council of Provinces on Friday 9 October 2020, submitting the Bill to Parliament.

This follows Cabinet’s approval of the Bill on 9 September 2020 and a process to obtain final certification from the Office of the Chief State Law Adviser.

The Chief State Law Adviser has now certified the Bill as constitutional. This paves the way for the next step in the process whereby the Bill has been gazetted on Friday 9 October 2020, and submitted to Parliament.

The Expropriation Bill will then be subjected to Parliamentary processes which we must all respect.”

In terms of various existing laws, the President, at least seven National Ministers, all Provincial Premiers and all municipalities have powers of expropriation. What is needed is a law of general application that will ensure that any act of expropriation is in compliance with the Constitution of South Africa, 1996.

The Department of Public Works and Infrastructure drafted the Expropriation Bill following a lengthy consultation process that included receiving about 50 000 comments from South Africans. The Department also consulted business, labour and community stakeholders through the National Economic Development and Labour Council (Nedlac).

We must emphasise that the drafting of the Expropriation Bill was separate from the work of Parliament in reviewing Section 25 of the Constitution. The Bill has been drafted to be consistent with Section 25 of the Constitution as it currently stands. The Chief State Law Adviser has certified that it is so consistent.

HISTORIC CONTEXT:

Given the sad history of our country and spatial injustices, government is clear that land reform is urgent and that there is a need to comprehensively and adequately address the consequences of the legacy of apartheid.

Government is committed to restitution, redistribution and land tenure, as recommended by the Presidential Advisory Panel.

Expropriation is not unique to South Africa. The ability of governments to acquire or expropriate land for the public good is something that is found worldwide.

This power of governments – of a local, provincial, or national government to take property for public use –exists, for example, in the USA, the UK, New Zealand, Australia, South Korea, Singapore, Ethiopia, Rwanda, Brazil, Mexico, Chile, France, Norway, and Germany. There are very many other examples. Our Constitution expressly authorises expropriation to redress injustices of the past.

These powers are given different names in different places. In the USA, the term used is “**eminent domain**”; in the India and Singapore it is referred to as “**land**

acquisition"; in the UK, New Zealand and Ireland it is called "**compulsory purchase**"; and in Canada, Russia, Brazil and most of Western Europe, these powers are referred to as "**expropriation.**"

WHY THE BILL IS NEEDED:

The Bill is part of the Government's comprehensive approach to land reform and redressing spatial inequality and improving access to services and opportunities.

The Bill is part of the comprehensive land redistribution and agricultural development programme.

Expropriation of property with nil compensation is not a silver bullet. It is only but one acquisition mechanism that in appropriate cases will enable land reform and redress, as agreed by the Presidential Advisory Panel Report on Land Reform and Agriculture.

Government is committed to restitution, redistribution and land tenure, as recommended by the Advisory Panel.

The Bill brings certainty to South Africans and investors because it clearly outlines how expropriation can be done and on what basis. This legislative certainty is critical as we rebuild our economy and invest in our communities.

This existing Expropriation Act dates back to 1975. The Presidential Advisory Panel Report pointed out that it is "inconsistent with the Constitution", and "the correction of this has been long-delayed". The Panel pointed out that the 1975 Act "undermines the constitutionally enshrined principles of lawful, procedurally fair and reasonable administrative justice".

The Bill is meant to assist all organs of State, including the local municipalities where most of the vulnerable groups are located. Local, Provincial and National Authorities will use their legislation to expropriate in the public interest for varied reasons that seek to amongst others, promote inclusivity and access to natural resources which

will benefit women, children and people with disabilities. They will have to do so in accordance with the constitutionally compliant new Expropriation Act.

One of the cornerstones of the proposed legislation is that the holders of unregistered rights in the property must be treated on an equal and procedurally fair basis in the expropriation of such property.

The Bill retains unchanged the substantive content of the earlier Bill that was before Parliament but incorporates a new clause 12(3), (4) dealing with instances where it may be just and equitable to pay nil compensation for expropriation of property in the public interests.

The Constitution provides that compensation for expropriation must be “just and equitable” having regard to all relevant circumstances. The Bill outlines circumstances when it may be just and equitable for nil compensation to be paid. It does not prescribe that nil compensation will be paid in these circumstances. The Bill provides that the amount of compensation will be determined by the courts.

The Bill states:

“12 (3) It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to—

(a) where the land is not being used and the owner’s main purpose is not

to develop the land or use it to generate income, but to benefit from appreciation of its market value;

(b) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;

(c) notwithstanding registration of ownership in terms of the Deeds

Registries Act, 1937 (Act No. 47 of 1937), where an owner has abandoned the land by failing to exercise control over it;

(d) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land; and

(e) when the nature or condition of the property poses a health, safety or physical risk to persons or other property.

(4) When a court or arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), it may be just and equitable for nil compensation to be paid, having regard to all relevant circumstances.”

LEGISLATIVE DRAFTING EXPERTS

In the process of developing this Bill, legal experts were widely and sufficiently consulted to assist the Department with the drafting of the Bill.

We are now at the start of the legislative process. Parliament will now follow its processes to consider the Bill and every South African will have the opportunity to participate as Parliament considers, debates and consults on the Bill.

A copy of the bill can be found on the government gazette:

<http://www.gpwonline.co.za/Gazettes/Pages/Published-Separate-Gazettes.aspx>

ENDS

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