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**STATEMENT BY MINISTER OF PUBLIC WORKS AND
INFRASTRUCTURE, PATRICIA DE LILLE**

**EXPROPRIATION BILL AIMS TO REPLACE UNCONSTITUTIONAL
EXPROPRIATION ACT OF 1975**

*Note to editors and journalists: The following remarks were made by
Minister Patricia de Lille, MP, during a debate on the Expropriation Bill in a
Parliamentary Session today, 28 September 2022*

Honourable Speaker / House Chairperson

Much has been said about the Expropriation Bill and it has been a process spanning over many years, including wide spread public consultation to get to this point where the latest version of the Expropriation Bill is before Parliament for debate.

The Expropriation Bill has been drafted by the Department of Public Works and Infrastructure, after extensive consultation and with the assistance of Senior Counsel and Constitutional experts.

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.

These powers are given different names in different places. In the USA, the term used is “eminent domain”; in 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.”

Even the 1975 Act does not protect private property if it is required for public use and public interest.

The Expropriation Bill and the Constitution

The Expropriation Bill is intended to replace the current and apartheid era law, the Expropriation Act of 1975.

The 1975 Act is inconsistent with the Constitution in many respects. The current Bill proposes to bring the law in line with the Constitution.

With the Constitution as the highest law in the country, all our legislation as a Constitutional Democracy, must be in line with the rule of law, and above all they should pass Constitutional muster.

The Bill has been drafted to be consistent with Section 25 of the Constitution as it currently stands.

Section 25 of the Constitution states that:

“Property

(1) no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”

The Bill is framework legislation that spells out clearly how and when expropriation can take place to and by all expropriating authorities.

The Expropriation Bill makes explicit what is implicit in Section 25 of the Constitution.

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

Clause 12(3), (4) of the Bill deals with instances where it may be just and equitable to pay nil compensation for expropriation of property in the public interest.

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.

Section 25 provides a solid and clear foundation for the implementation of section 25(2) of the Constitution which says: “property may be expropriated only in terms of law of general application-

- a) For public purpose or in the public interest; and
- b) Subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.”

Here the Constitution is very clear on why property may be expropriated and that the compensation will be determined by agreement between parties and in the absence of an agreement, the land owner can approach the courts.

Retired deputy chief justice, Dikgang Moseneke at an occasion marking 20 years into our democracy said and I quote: “Our constitutional democracy was forged on the anvil of division, past injustice and economic inequity, but also on the hope for reconciliation, nation building and social cohesion.”

“It envisions restitution of land to victims of dispossession but does not permit arbitrary deprivation of property. It permits expropriation and redistribution of land for public good provided that it is against just and equitable compensation.” END QUOTE

The Presidential Advisory Panel Report pointed out that the 1975 Expropriation Act is “inconsistent with the Constitution”, and that it “undermines the constitutionally enshrined principles of lawful, procedurally fair and reasonable administrative justice”.

The Expropriation Bill brings certainty to South Africans and investors because it clearly outlines how expropriation can be done and on what basis.

It is extremely dangerous to suggest that government will arbitrarily take people's property such as their homes.

Speaker, land is an emotive issue. Across the country, there is still great pain being felt by people of colour who were stripped of their homes and denied the right to own property under the Apartheid regime.

We can debate our points but what is wrong, is to instil fear mongering and distort the facts in a debate about land and this is done all too often.

Many times, those against the Expropriation Bill have been people who were never subjected to laws that stripped people of their property or rights to own property.

These scripted commentators have insinuated that the Expropriation Bill will be used to strip millions of South Africans from their homes and other assets without fair procedures or equitable compensation.

I am certain we can agree, that is not the kind of pain and injustice that democratically elected representatives will subject South Africans to again.

It is our responsibility to correct the historic injustice of land ownership patterns in South Africa.

The Department of Rural Development and Land Reform commissioned two land audits in recent years looking at the extent of colonial land dispossession and apartheid forced removals.

The first study determined the amount of land owned by the state or in private ownership and the second at only land in private ownership. This Land Audit found that:

- 79% of South African land was in private ownership,
- 14% owned by the State,
- and 7% was unaccounted for.

Of the 14% owned by the State, this is divided between land owned by national government departments, provincial governments and municipalities.

The 2017 audit looking at land in private ownership found that, that individuals, companies, and trusts own 90% of the land in our country.

We must be clear that we cannot continue with the 1975 Expropriation Act because it is unconstitutional.

The Expropriation Bill is an effort to replace the Act with a Bill that is constitutional and has been certified by the Chief State Law advisor and senior counsel as such.

We must remember that still, today, mainly people of colour live on the outskirts of our towns and cities, far away from economic opportunities and do not own any land, thanks to the apartheid regime's draconian laws.

It is our responsibility to correct this historic injustice. These are the wrongs of our past that we have been working to remedy since the advent of South Africa's democracy in 1994.

In closing, the independence and fairness of our judicial system has been proven time and time again and I have always put my faith in the judiciary and so can any land or property owner.

The issue of the expropriation of land without compensation has always been part of the Constitutional construct that we have, and the current process with the Expropriation Bill is to give effect to the Constitution.

ENDS

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