

PRESS STATEMENT BY THE DEPARTMENT OF PUBLIC WORKS ON THE WITHDRAWAL OF THE EXPROPRIATION BILL

1. On 27 August 2008, it was reported that the Portfolio Committee on Public Works had decided to withdraw the Expropriation Bill (the Bill) until further notice. The reason advanced for the withdrawal was that more time was needed to ensure consultation with a wide variety of stakeholders. The Department does not know of any stakeholders who require consultation. This statement has been prepared to clarify the position of the Department. It must not be understood as an attempt to second guess the decision of the Portfolio Committee.
2. To put the issues in a proper perspective, it is necessary to provide a background to the Bill. In June 2007, the National Policy Conference of the African National Congress resolved that it was necessary to develop a detailed strategy in order to meet the target of 30% redistribution of land by 2014.
3. During November 2007, the Department of Public Works released a policy document on Expropriation of land and other property in the public interest or for public purposes. The policy document had two main objectives: to enable the state to use expropriation as a means to effect land reform and to align the Expropriation Act, 1975 with the Constitution, 1996. The policy document stated that a draft Bill will be developed.
4. Although not legally required, the Department decided to invite public submissions in relation to the draft policy document. Expectedly, there was an overwhelming response to the policy document. In particular, organizations like Agri-SA, National Association of Farmer's Union, and many other organizations representing affected stakeholders responded to the policy document. In December 2007, the ANC held its 52nd National Conference in Polokwane. One of the resolutions made at the Polokwane conference was to:

“...where necessary, expropriate property in the public interest or for public purpose in accordance with the Constitution to achieve equity, redress, social justice and sustainable development.”
5. Significantly, it was resolved that all legislation dealing with expropriation must be aligned with the Constitution. This resolution was consistent with the initiative undertaken by the Department to repeal the 1975 Act and introduce a new Expropriation Act.

6. During February 2008, the Department held public hearings on the policy document. The hearings were also attended by members of the Portfolio Committee on Public Works. Several submissions were made in relation to the proposed Bill. All parties, without exception, who attended the public discussions believed that a repeal of the 1975 Act was overdue. The only source of contention related to the provisions of the new Bill. Even in relation to the provisions of the Bill, the differences were narrower than what the media reported. The differences which emerged at the public hearings held in February 2008 concerned primarily three areas: the definition of public interest; the role of the courts in the determination of compensation and the role of market value in the determination of compensation.
7. Subsequent to the public hearings on the policy document, the Department prepared the Bill. The Bill responds to the resolution adopted at the Polokwane conference: it proposes a repeal of the 1975 Act and proposes an alignment of the new Act with the Constitution. Secondly, it proposes that government must be empowered to use expropriation as a measure of attaining land reform through which the tri-cameral purposes of equity, redress and social justice can be achieved.
8. The Bill addresses all these shortcomings in the 1975 Act, and is founded upon certain principles which ensure that the objectives of the Constitution are met.
9. The process of developing legislation normally commences with an approval from Cabinet. In March 2008, the Bill was approved by Cabinet. Subsequent to Cabinet approval, it was referred to the Chief State Law Advisor for certification of compliance with the Constitution. The Chief State law advisor confirmed that the Bill was consistent with the Constitution.
10. After the certification of the Bill, it was submitted to Parliament for further processing. The Bill was published for public comments. There have been more than 3000 submissions, oral and written, in response to the Bill. All provinces have been visited. Public participation in this process was very successful, with all venues (with the exception of

Umtata) full to capacity. In these hearings, the Bill was debated comprehensively; questions were raised; clarification was sought and provided.

11. During the public hearings, it became clear that there is an overwhelming number of people, mainly black, rural and landless, who contend that the Bill is long overdue and did not go far enough. For instance, the Landless People's Movement strenuously argued for the repeal of the provisions dealing with compensation to owners of property. In some instances, it was stated that the requirement of payment of compensation for land which was dispossessed without compensation is on its own objectionable. There was also a feeling that the process of land reform has largely failed the rural masses and through this Bill, the government could restore the hope of land reform.
12. After the public hearings, the Parliamentary programme stipulated that the Department should present its response to the submissions made in the public hearings. The programme, however, was changed without consultation with the Department.
13. Insofar as there are issues relating to the alleged unconstitutionality of the Bill, it is important to record that the Department in fact sought legal advice from senior counsel who confirmed that the Bill is consistent with the Constitution. Parliament was informed of this.
14. Subsequent to this, the Portfolio Committee, and in particular, the Chairperson has not given reasons why the Bill cannot be presented for discussion. Initially, it was suggested that the drafters should find common ground with Parliamentary legal advisors. The consensus could not be found because the legal advisors of parliament effectively refused to co-operate with the officials of the Department. This was pointed out to the Chairperson of the Committee.
15. Given what we have outlined on how inclusive the process was from the beginning, it is difficult to accept that the real reason for the "shelving" of the Bill relates to lack of proper consultation as alleged.

The Department, however, accepts that ultimately, Parliament has the prerogative to decide whether the Bill should be processed. In that process, however, it is important that all facts relevant to the decision should be disclosed. This statement is intended at bringing those facts to light.