



LEGAL RESOURCES CENTRE

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Your Ref:
Our Ref: HS/WW/zulfa/exprop

6 July 2015

Mr BA Martins, MP
Chairperson of the Portfolio Committee on Public Works
National Assembly
Parliament
bmartins@parliament.gov.za

care of
The Committee Secretary,
PO Box 15, Cape Town, 8000,

Secretary of Committee: Akhona Busakwe
Tel: 021 403 3859; Cell: 083 709 8390; E-mail: abusakwe@parliament.gov.za

Secretary to Chairperson: Gadija Osman
Tel: 021 403 2847 Cell: 083 709 8423; E-mail: gosman@parliament.gov.za

Dear Sir

**SUBMISSION ON THE EXPROPRIATION BILL B4-2015:
Expropriation and the Restitution Act**

- 1 We refer to our submission on the bill relating to informal rights holders on communal land sent to you in May this year, a copy of which is attached for ease of reference, and your further call for submissions to be received by you today.
- 2 We have now had access to a number of further submissions to you and we note that the issue of land reform and restitution relating to expropriation may not have received the attention that they deserve. We therefore ask you to:
 - a) consider our further submission on the alignment of the bill with the Restitution of Land Rights Act 22 of 1994 and other land reform statutes;

- b) consider amending the wording of the bill to ensure that restoration of land when ordered by the Land Claims Court, is not delayed by the provisions of chapter 3 and 4 of the bill;
 - c) allow the LRC to make oral submissions at the public hearings on the bill.
- 3 In the preparation of this submission we have had informal discussions with the office of the Chief Land Claims Commission, other officials of the Department of Rural Development and Land Reform and other stakeholders, and we are not convinced that the alignment of land reform legislation and the bill has as yet received appropriate attention. Delays in the acquisition and expropriation of land earmarked or designated for land reform may affect the rights of both land claimants and owners.
- 4 A number of land reform laws and policies substitute and put the Minister of Rural Development and Land Reform in place of the Minister of Public Works as the functionary contemplated in chapter 2 of the bill. Alternatively the Minister or Department of Rural Development and Land Reform may act as expropriating authority as contemplated in the bill and specifically chapter 3 and 4 thereof in initiating and managing the process of investigation and issuing the expropriation notice.
- 5 We considered the following statutes and delegated legislation and directives:
- a. The Restitution Act
 - b. The Rules of the Land Claims Court
 - c. The Rules regarding Procedure of the Land Claims Commission
 - d. Guidelines for Expropriation in terms of section 42E of the Restitution of Land Rights Act
 - e. Expropriation Flowchart annexed to the Guidelines [which provides for an 8 month process]
 - f. POLICY AND PROCEDURES FOR EXPROPRIATION OF LAND IN TERMS OF ACT 126 AND ESTA (Submitted by: Directorate: Redistribution Policy And Systems) PC.DOC. 48/1999
 - g. The Property Valuation Act 17 of 2015
- 6 Much work will have to be done to augment and amend the policy statements and directives of the department of Rural Development and Land Reform in order to comply with the provisions of the bill once it becomes

law, because the provisions of the bill protect the procedural and substantive rights of affected formal and [certain] informal rights holders without ambiguity.

- 7 The Restitution Act, section 42E thereof and the Rules of the Land Claims Court require extensive investigation of :
- a. The purpose of the acquisition in terms of the Restitution Act;
 - b. The registered and unregistered rights on the land to be acquired;
 - c. The future land use and its feasibility for the purpose of acquisition;
 - d. The consequences and impact of the land acquisition;
 - e. The amount of compensation payable;
 - f. Procedures involving inputs and hearings for the affected rights holders.

- 8 We believe that there is much overlap in the provisions of the Restitution Act and the Court Rules on the one hand, and the provisions of chapters 3, 4, 5 and 6 of the bill on the other hand. If the procedures of both acts must be complied with serially and consequentially, it may result in duplication of procedures and effort, and result in unintended delays.

- 9 Our proposal is that your committee, after calling for the comment of the Land Claims Commission, consider amending section 42E of the Restitution Act in this bill currently before you, in the following manner:

*(2) The Expropriation Act, ... of 2016 ~~1975 (Act 63 of 1975)~~, shall, with the necessary changes, apply to an expropriation under this Act, and any reference to the Minister of Public Works in that Act must be construed as a reference to the Minister for the purpose of such expropriation: - **Provided that the Court** [ie the Land Claims Court] **when making an order under section 35 of this Act, may direct that the provisions of chapters 3 and 4 of the Expropriation Act shall not apply to the relevant expropriation under this Act.***

*(3) Where the Minister expropriates land, a portion of land or a right in land under this Act, the procedure, amount of compensation and the time and manner of payment shall be determined ~~either by agreement or by the Court in accordance with section 25 (3) of the Constitution~~ **in accordance with the Expropriation Act.***

- 10 For the sake of completeness, our proposals submitted in the earlier round of comment appear below. You will note that we have now included a new definition “compensation” as a consequential amendment in line with our

proposal that the investigation phase includes proposals for the re establishment of livelihoods and community, and benefit sharing.

- 11** Finally, we humbly submit that your committee's further call in the media for comments before public hearings are held, may not have achieved the goal of reaching and inviting inputs from potentially affected rural communities on communal land. They may have to be invited in person and assisted to attend at Parliament. Their potential participation in hearings of provincial legislatures under section 118 of the Constitution cannot substitute for participation in the current legislative process of the National Assembly under section 59.

We look forward to hearing from you regarding our proposal and we request to further motivate such to your committee in person at the earliest opportunity.

Your faithfully,

LEGAL RESOURCES CENTRE

Per:

_____[signed]_____

Henk Smith
083 266 1770

Proposed amendments

Definitions

“compensation” means, in the case of compensation to a community, reparation and comparable redress which may include the provision of land and amenities to re establish lively hoods and community and arrangements for community benefit sharing

“community” means any group or portion of a group of persons whose rights to land are derived from shared rules determining access to land held in common by such group,

where the right to land includes the use of, occupation of, or access to land in terms the customary law of the community or the custom, usage or practice in the community, and

where the land in question at any time vested in—

the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936); the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; land to which the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3 KZN of 1994); land to which the Transformation of Certain Rural Areas Act of 1998 applies,

land acquired by or for a community whether registered in its name or not; and

any other land, including land which provides equitable access to land to a community as contemplated in section 25(5) of the Constitution

and the right or interest in land of a beneficiary under a trust arrangement in terms of which the trustee is a body or functionary established or appointed by or under an Act of Parliament or the holder of a public office.

“person” includes a community or a part thereof;

“suitable alternative land”

Chapter 3 investigation

5. (1) When a property is required for a public purpose or in the public interest, an

expropriating authority must, amongst others, ascertain—

- (a) the suitability of the property for the purpose for which it is required, and
- (b) the existence of registered and unregistered rights in such property and the impact of such rights on the intended use of the property, **and**
- (c) **where land is held by a community or a community is the holder of an unregistered right in land, whether the community had agreed to disposal of or expropriation of its right, whether provision has been made or will be made for reparation and compensation for the relocation of households and the dislocation of the community and its institutions, including**

- (i) **suitable alternative land;**
- (ii) **alternative livelihoods;**
- (iii) **support to re establish the community and its institutions;**
- (iv) **community participation and benefit in the development of the property**

Insert new 5(2)(c)

authorise a land rights enquiry and appoint a suitable person as an enquirer to investigate and report on the rights affected and the reparation and remedies proposed: Provided that a land rights enquiry shall include an investigation of and report on

- (a) **the nature and extent of all rights including constitutional and human; land and tenure; and competing or conflicting, rights, interests and tenure of land, whether legally secure or not which are or may be affected the proposed expropriation;**
- (b) **the options available for legally securing any legally insecure rights;**
- (c) **the provision of access to alternative land on an equitable basis;**
- (d) **the need for reparation and comparable redress and the nature and extent of such redress;**
- (e) **provisions for the community to participate in and share in the benefits of any development on the land considered for expropriation.**

Amend section 42E of the Restitution Act in this expropriation bill

*(2) The Expropriation Act, ... of 2016 ~~1975 (Act 63 of 1975)~~, shall, with the necessary changes, apply to an expropriation under this Act, and any reference to the Minister of Public Works in that Act must be construed as a reference to the Minister for the purpose of such expropriation: - **Provided***

that the Court [ie the Land Claims Court] **when making an order under section 35 of this Act, may direct that the provisions of chapters 3 and 4 of the Expropriation Act shall not apply to the relevant expropriation under this Act.**

(3) Where the Minister expropriates land, a portion of land or a right in land under this Act, the procedure, amount of compensation and the time and manner of payment shall be determined ~~either by agreement or by the Court in accordance with section 25 (3) of the Constitution~~ **in accordance with the Expropriation Act.**