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Committee Secretary

Portfolio Committee on Public Works and Infrastructure  
National Assembly  
Parliament

Attention: Ms Nola Matinise  
[nmatinise@parliament.gov.za](mailto:nmatinise@parliament.gov.za)

Dear Secretary,

**PUBLIC PARTICIPATION AND THE EXPROPRIATION BILL, 2020 [B23-2020]**

We note that much or most concern about the Expropriation Bill (content and process) might be regarded as promoting “white” or “high-income” interests. Whilst we agree with those who raise valid Constitutional concerns, including our own Submissions, we stress that, for our nearly 50-year history, we have been and remain concerned about and associated with the poor, who are primarily black South Africans. To avoid repetitive explanations, definitions and qualifications, our shorthand for “mostly poor”, “mostly black” or “mostly African” people is simply, “the poor”.

Focusing on the poor when considering the Expropriation Bill is especially appropriate since the worst apartheid abomination was the racist denial of secure property rights for most South Africans. Virtually all “black” land expropriated was/will be under laws similar to the Bill. Hard as this might be to believe, it is true and ominous.

We, like the Committee, are obviously aware of and sensitive about the imprecision, risks, and ambiguities of group (racial and otherwise) classifications, categorisations and stereotypes.

Apart from being concerned about the Bill itself, **the purpose of this Submission is to draw the Committee’s attention to non-compliance with Constitutional and procedural imperatives.** Although we are concerned about everyone’s public participation rights, we

draw special attention to the poor and what public participation is required for the protection of their rights.

The poor are by far the most people whose land has historically been and will in future be expropriated. Unlike the rich, the poor:

1. are generally uninformed about the implications of the Bill for them,
2. have not been mobilised or organised to protect their rights and interests, and
3. do not have the resources necessary to protect themselves if the Bill is enacted.

The public narrative misleads most people, especially the poor, into assuming that the Bill targets the rich for the benefit of the poor. Nothing could be further from the truth. The Committee will have received submissions reflecting this misconception and contributing to widespread disinformation.

We do not in this submission analyse every provision that would impact the poor disproportionately because negative impacts will be obvious to anyone who reads the Bill and asks regarding every provision: *What are the implications for the poor?* It is obvious from any reading of the Bill from that perspective that it should never be implemented in a country where most people are poor.

One of the most dangerous myths is that the rich, not the poor, have land and other assets that might be expropriated. Under the Bill (if enacted in anything like its present form), many poor people will lose what little they have.

Expropriation is and has always been a common occurrence in SA and elsewhere. It is easily overlooked that most expropriations are decided by petty officials in hundreds of organs of state at all three levels of government for many government and private purposes, including infrastructure, and for wealthy developers and mining companies. Properties of both the rich and the poor are routinely expropriated by the thousand to widen roads, build schools, make parks, create graveyards, install power substations, provide infrastructure and services, open mines, develop properties, establish resorts, and so on.

The government's new infrastructure programme will require substantial increases in expropriation. Since the greatest need is infrastructure and services in poor areas, that is where many more expropriations than usual will occur.

In all cases – thousands of them – *the poor will be helpless*, while the rich will have enough wealth to defend their rights. The poor will be jeopardised three-fold because:

1. they are typically not yet registered owners of their land,
2. they are financially defenceless, and
3. they live where the number of infrastructure and services expropriations will increase disproportionately.

Accordingly, **for public participation to be lawful *and* legitimate** the poor must be:

1. properly informed about the grave implications for them,
2. supported in endeavours to protect their rights and interests, and
3. afforded enough time to mobilise and make informed submissions.

Since the public participation process came nowhere near satisfying these requirements it has, to that extent, been invalid.

We remind the Committee of (a) strongly worded judgements on the subject and (b) the obligation for all policies and laws to be preceded by an objective, sophisticated and comprehensive Socio-Economic Impact Assessment (SEIA).

We respectfully urge the Committee to refer the Bill back to the Department for both a SEIA and Constitutional compliance. The Committee should, we suggest, specifically require the obligatory and missing SEIA to quantify implications for the poor. Special attention must be paid by informed and concerned experts to the Bill's social and economic implications for everyone, especially the poor.

We draw special attention to one of the most important yet most neglected provisions in the Constitution, section 195, which we quote in full (with our emphasis).

#### **BASIC VALUES AND PRINCIPLES GOVERNING PUBLIC ADMINISTRATION**

195. (1) Public administration **must** be governed by the **democratic values and principles** enshrined in the Constitution, **including** the following principles:
- (a) A high standard of professional **ethics must be promoted and maintained.**
  - (b) **Efficient, economic and effective use of resources** must be promoted.
  - (c) Public administration must be **development-oriented.**
  - (d) Services must be provided **impartially, fairly, equitably and without bias.**
  - (e) People's **needs must be responded to, and the public must be encouraged to participate in policy-making.**
  - (f) Public administration must be accountable.
  - (g) **Transparency must be fostered by providing the public with timely, accessible and accurate information.**
  - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
  - (i) Public administration must be broadly **representative of the South African people**, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (2) The above principles **apply to -**
- (a) administration in **every sphere of government;**
  - (b) organs of state; and
  - (c) public enterprises.
- (3) National legislation must ensure the promotion of the values and principles listed in subsection (1).
- (4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.
- (5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.
- (6) The nature and functions of **different sectors, administrations or institutions** of public administration **are relevant factors** to be taken into account in legislation regulating public administration.

To ensure compliance with §195, we respectfully submit that the Committee should revisit its decision to proceed with oral presentations on 24 and 25 March 2021. We submit that oral presentations are premature and cannot be considered lawful or legitimate in the absence of:

1. effective consideration of implications for the poor,
2. compliance with various judgements,
3. §195 of the Constitution,
4. proper consideration of *all* 90,000 submissions,
5. careful consideration of every request for oral evidence, and
6. compliance with other Constitutional provisions, especially sections 1, 9, 10, 12, 25, 26, 32 and 33.

We could elaborate on the direct relevance of each of these provisions, but trust that their relevance will be obvious to anyone who reads them in the present context.

We draw special attention to the fact that provisions *not* in the Bill of Rights, such as §1 and §195, are *not* subject to the Limitation Clause (§36) and are therefore absolute – they must always be complied with absolutely under all conditions.

Our understanding is that the Committee has not been told how many people requested permission to appear. The Committee is therefore not in a position to make fair and reasonable public participation decisions regarding either who appears or how to proceed thereafter.

Our respectful submission is that the Committee runs the risk of not satisfying its duty to facilitate Constitutionally compliant public participation. We are indebted to IRR for researching some of the decisive Constitutional Court judgments. Non-compliance with these and other judgments, including High Court judgements, would render the process and thus ensuing legislation unconstitutional.

1. The public must enjoy '*a meaningful opportunity to be heard in the making of laws that will govern them*'.
2. The public must have '*a reasonable opportunity to know about the issues and to have an adequate say*'.
3. There must be adequate time for consultation. A '*truncated timeline*' for adoption of legislation may not be '*inherently unreasonable*'.
4. Too little time makes it '*simply impossible ... to afford the public a meaningful opportunity to participate*'.
5. Legislative timetables are not allowed to not compromise constitutional rights, The '*timetable must be subordinated to the rights guaranteed in the Constitution.*'
6. For the public and policymakers to '*know about the issues*' as required by the Constitution, there must be an objective, comprehensive and professionally researched SEIA which quantifies probable costs, benefits and unintended consequences.
7. Since no compliant SEIA preceded the Bill, the Committee cannot lawfully or legitimately process it.
8. In view of the extreme discretionary and procedural powers envisaged, and provision for zero compensation, the SEIA would have to pay special attention to the likelihood of widespread temptation, corruption, abuse, intimidation, victimization, discrimination and injustice.

The Memorandum on the Objects of the Bill is fatally flawed for various reasons:

1. It considers only government financial implications.
2. It addresses neither social nor economic impacts as required.
3. No mention is made of potential impacts on rich or poor victims of expropriation, especially not the poor who are by far (as explained above) the most seriously impacted citizens.
4. Broader implications for the economy, investment, property rights, security of tenure, social costs, and so on, have neither been analysed nor brought to the Committee's attention.

Our respectful view is that the Bill would be ill-advised under the best of conditions. It was conceived before our current extreme crisis. A measure with such far-reaching implications should, we suggest, at the very least, be shelved until the country is clearly enjoying an enduring recovery. Even then, it should be considered only after effective public participation and a fully compliant SEIA.

We repeat our emphasis of the implications for all citizens, especially tens of millions of poor people. Many poor people, denied property rights under apartheid, are finally getting real ownership thanks to our Khaya Lam programme and various government initiatives. To subject them now to this law would be a perverse travesty. It would put black people back where they were during apartheid's darkest days. The apartheid regime was empowered, as this Bill proposes, to expropriate "black" land freely and easily with little or no compensation. We encourage all decent people to reflect on this and agree that no such powers should ever exist again.

Since the Constitution's public participation conditions have not been met, and since no compliant SEIA has been produced, we urge the Committee to refer the Bill back to the Department.

Sincerely  
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