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EXPROPRIATION BILL: Status update on the progress of the Expropriation Bill before the NCOP

On 7 February 2024, the National Council of Provinces (NCOP) Select Committee on Public Service and Administration, Public Works and Infrastructure (DPWI) convened to consider the proposed amendments to the Expropriation Bill (C-List).

The Parliamentary Legal Advisor presented the Select Committee's proposed amendments.

The provinces have been afforded the opportunity to amend their Final Mandates following the amendments implemented by the approved C-List.

The NCOP will meet on 21 February 2024 to enable the provinces to submit their Final Mandates and vote on the Expropriation Bill.

In the event the NCOP approves the Expropriation Bill, with at least 5 of the 9 provinces voting in favour of the Expropriation Bill, then it will be returned to the National Assembly to consider the amendments made by the NCOP.

If the National Assembly approves the amendments as proposed by the NCOP then the Expropriation Bill will be handed over to the President to sign into law or to be referred to the Constitutional Court for a declaratory order.

The members can watch the meeting scheduled for 21 February 2024 here <https://www.youtube.com/@ParliamentofRSA>

If the National Assembly does not agree with the amendments then the Bill will be referred for mediation between the two houses and if a compromise cannot be reached and less than two-thirds of the National Assembly are not in favour of the Bill then the Bill will lapse in 30 days.

The Expropriation Bill is with the two houses of Parliament for consideration. Both houses of Parliament have considered the presentations by the public via the public participation process and there is currently no opportunity for the public to participate in the process.

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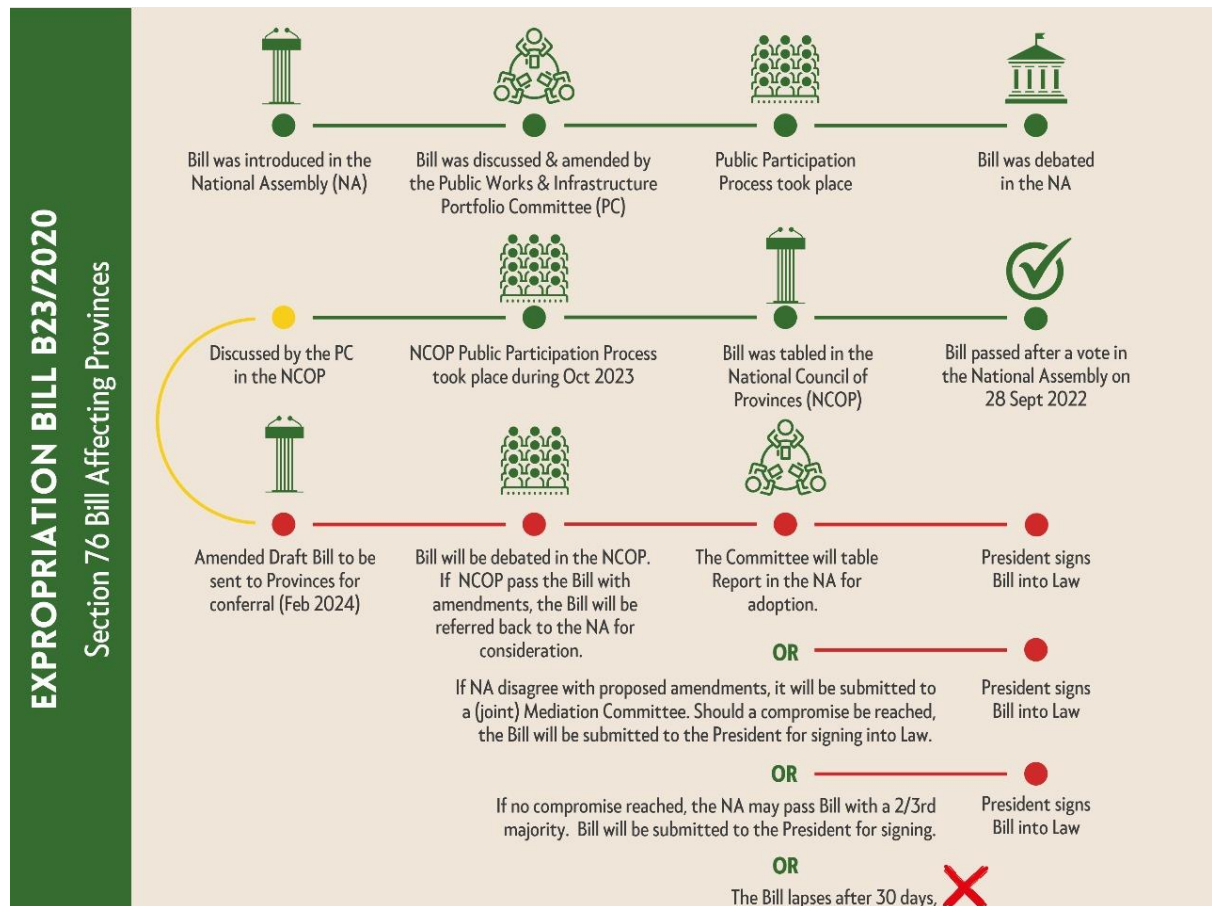
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INFOGRAM OF THE PARLIAMENTARY PROCESS OF THE EXPROPRIATION BILL



C-List Amendments proposed and approved by DPWI

Clause 1: definition of ownership amended to include common law and customary law;

Clause 2: addition of sub-clause 3) “ The act applies, with the necessary changes, to the compulsory acquisition of property directly or indirectly by a third-party beneficiary through an expropriating authority in the public interest, including for the purposes contemplated in Section 25(4) to (8) of the Constitution.”

- Page 6, in line 22 after “temporarily” to insert “in terms of section 20”

Clause 3: Page 6, in line 50, after “in any law” insert “as”.

Clause 5: Page 7, in line 10, to omit “factors” and to substitute “circumstances”.

Clause 7: Page 9, from line 19 to omit “and where the expropriation is for temporary use of the property in the future, the intended period of such temporary use”,

- Page 9, in line 40, to omit “and”.
- Page 9, in line 41, to omit “.” and to substitute “; and”
- Page 9, after line 41, to add the following paragraph “ n) the details of the empowering law authorising the intended expropriation”.
- Page 10, in line 17, to omit “amount of compensation has” and to substitute “compensation, the amount of which and the time and manner of payment which have”.

Clause 8: Page 11, in line 2, to omit “future”.

- Page 11, in line 3 to omit “in the future” and to substitute “, as contemplated in section 20”.
- Page 11, in line 6 to omit “and”.
- Page 11, in line 8, to omit “.” and substitute “; and”
- Page 11, after line 8, to add the following paragraph: “h) the details of the empowering law authorising the expropriation”.

Clause 9: On page 11, in line 59, after “holder” to insert “of a right”.

- Page 12, in line 10, to omit “any amount of depreciation” and to substitute “the amount of loss of value”.

Clause 10: Page 12, from line 28, to omit subsection (1) and to substitute the following subsection (1) if after the date of expropriation, a person claims to have held an unregistered right in the expropriated property, for which that person has not been compensated, and was not served with a notice of expropriation, the expropriating authority must request that person to deliver to the expropriating authority, in the manner prescribed in the notice within 30 days of receipt and subject to section 23 – “(a) evidence of that person’s right in the expropriated property; or (b) a copy of any written instrument evidencing or giving effect to that person’s unregistered right, if such instrument is in that person’s possession or under the person’s control, or any other evidence to substantiate that person’s claim.”

Clause 12: Page 13, from line 42, to omit “ and the interests of the expropriated owner or expropriated holder” and to substitute “, in the interests of those affected including an owner, holder of a right and mortgagee”.

- Page 13, in line 54, to omit “expropriated owner or expropriated holder” and to substitute “ owner or holder of a right”.
- Page 14, from line 4, to omit “expropriated owner or expropriated holder” and to substitute “owner or holder of a right”.
- Page 14, in line 24 after “it” to insert “despite being reasonably capable of doing so”.
- Page 14, in line 17, to omit “and” and substitute “.”.
- Page 14, from line 28, to omit paragraph (e)

Clause 13: Page 14, in line 46, after “amount” to insert “, provided that if the expropriated owner or expropriated holder of a right disputes the amount of the compensation, it may issue a provisional tax invoice for the amount of the compensation offered without prejudice to its right to dispute the amount of compensation offered by the expropriating authority.”

Page 14, from line 48, to omit “ dispatch to the expropriated owner or expropriated holder by prepaid registered post, or electronically transferred to his or her account” and to substitute “has been

electronically transferred to the bank account of the expropriated owner or expropriated holder of a right, or in a manner as agreed to by the parties or as decided or approved by a court in terms of section 19.”

Clause 15: Page 15, from line 11, to omit “ by no later than the date on which the right to possession passes to the expropriating authority in terms of section 9(2) or (4)” and to substitute “on the date and in the manner as agreed by the parties or as decided or approved by a court in terms of section 19.”

- Page 15, in line 20, after “subsection (2)” to insert “,”.
- Page 15, in line 20, after “arising” to insert “after the expropriating authority has decided to expropriate,”.

Clause 19: Page 16, in line 55, after “amount” to insert “, time and manner of payment”.

- Page 17, in line 4, after “amount” to insert “, time and manner of payment”.
- Page 17, in line 25, to omit “Any” and to substitute “Despite section 18 of the Superior Courts Act, 2013 (Act 10 of 2013), any”

Clause 20: Page 17, in line 34, after “basis” to insert “for a public purpose or in the public interest”.

- Page 17, from line 35, to omit “for a period not exceeding” and to substitute “ but not for no longer than”
- Page 17, in line 37, to omit “only” and after “exercised” to insert “only”.
- Page 17, in line 38, after “available” to insert “and”.
- Page 17, from line 50, to omit subsection (3) and to substitute the following:
“(3) Save for section 7(6)(a), the remaining provisions of this Act apply to urgent expropriations, but the expropriating authority may –
(a) depart from the following, if the degree or urgency so requires
(i) Section 5(3) and (5);
(ii) Section 6;
(iii) Section 7(2)(h), 7(2)(j), 7(2)(k), 7(2)(l), 7(4)(a) and 7(5);
(iv) Section 15(1); and
(b) reduce the provisions to a reasonable period, given the degree of urgency:
(i) Section 6(3); and
(ii) Sections 7(2)(h), 7(2)(j) and 7(4).”.
- Page 17, in line 57, to omit “determined” and to substitute “agreed or decided by a court”.
- Page 18, from line 3, to omit subsection (6) and to substitute the following subsection:
· “ 6) If the property in question is damaged as a result of the performance of an act contemplated in subsection (1), the expropriating authority must repair to a reasonable standard, or compensate the affected person for that damage after delivery of a written demand by the affected person and without undue delay.”.
- Page 18, in line 18, after “of” and to insert “,” after “property”.
- Page 18, from line 20, to omit subsection (10) and to substitute the following subsection:
“(10) If the property is land, the expropriating authority becomes liable for the municipal rates, taxes and levies and similar charges from the date of the expropriation.”

Clause 22: Page 19, in line 10, after “addressee” to insert “and delivered electronically to the electronic mail address of the addressee”.

- Page 19, from line 15, to omit subparagraph (ii) and to substitute the following subparagraph:
“(ii) If the identity of an heir or legatee, whose interest has passed or will pass to another person on the fulfilment of a condition, is unknown to the expropriating authority, or”,
- Page 19, in line 58, to omit “or”.
- Page 19, in line, to omit “.” and to substitute “;”.
- Page 19, after line 59, to insert the following paragraphs:
“(d) electronic mail, or
(e) in any other manner which may be prescribed by the Minister.”.

Clause 27: On page 21, in line 39, to omit “and” and to substitute “, interests or”.

General Amendment

The Bill is hereby amended by the substitution for the expression “expropriated holder” wherever it occurs, of the expression “expropriated holder of a right”.