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To: The Chairperson
Portfolio Committee on Public Works
Northern Cape Provincial Legislature

Presentation from Agri Northern Cape to the Portfolio Committee on proposed improvements to the Expropriation Bill (B 4B – 2015) on 18 April 2016

Agri Northern Cape realizes that expropriation is a power which governments across the globe can use as a last resort to advance the public interest.

However, in the current economic climate in South Africa, it is critical that we instil the utmost confidence in local and foreign investors to stimulate much needed growth in our economy.

Secure property rights are the cornerstone to the development of investor confidence in any economy.

The open and transparent process that was followed at NEDLAC in developing the Expropriation Bill is therefore commended by Agri SA and its affiliates, including Agri Northern Cape.

There are however the following outstanding issues on the Bill that needs urgent improvement.

1. The definition of “Expropriation”

After completion of the NEDLAC negotiations (where no definition was discussed) a definition of the term **Expropriation** was inserted into the Bill by the Portfolio Committee on Public Works. This was done at a very late stage in the process. The definition reads as follows:

“the compulsory acquisition of property by an expropriating authority or an organ of state upon request to an expropriating authority...”

Agri SA, its affiliates and Agri Northern Cape, strongly objects to the unilateral insertion of this definition into the Bill by the Portfolio Committee without proper consultation with the relevant stakeholders.

We also object to the inclusion of this definition on the following basis:

- The proposed definition limits the concept of expropriation to instances where the state acquires rights in property.
- **The danger** with this narrow definition is that it opens the door for government action that may severely limit property rights, without necessarily expropriating the property, but without compensation to owners for the loss in income due to the limited use of the property!
- The concept of ‘expropriation’ is not defined in the Constitution.
- A court could interpret the concept in the Constitution wider than proposed definition!

- The focus in the definition should be on the loss that the owner suffers, not on the acquisition by government organs.
- This definition is limiting and out of line with international jurisdictions.
- International practice is as follows:
 - The concept is developed by the courts on a case by case basis, it is not defined;
 - The courts retain discretion to determine when state encroachment on property rights qualifies as an expropriation.

Agri SA, its affiliates and Agri Northern Cape therefore propose that the definition be excluded from the Bill.

If a definition is deemed absolutely unavoidable a proposed alternative definition may read as follows:

“Expropriation means the compulsory acquisition or modification of property by an organ of state in the exercise of its statutory powers.”

2. The definition of Public Interest

Public Interest is defined in the Bill as follows:

“**public interest** includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources in order to redress the results of past racial discriminatory laws or practices;”

In the Constitution the concept of Public Interest is defined as follows in Section 25 (4):

“ (a) **the public interest** includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources;
and
(b) property is not limited to land.”

The opinion of Agri SA, its affiliates and Agri Northern Cape is that:

- The proposed definition is broader than that contained in section 25 (4) of the Constitution.
- The bill does not clearly define what is meant by this additional wording.
- The wording in the Bill is open to wide interpretation, which creates market uncertainty.

Agri SA, its affiliates and Agri Northern Cape therefore propose that the Bill should not expand on the wording in the Constitution.

3. Time of payment of Compensation

The reworking of the clause regarding the time of payment of compensation to read: “that payment takes place no later than the date at which the right to possession passes” still poses a concern because of the following:

- If payment only takes place at the latest possible date which is when possession passes, it may leave the owner and holders of unregistered rights little or no time to finance alternative accommodation.

Agri Northern Cape therefore proposes that this time period be extended.

We are of the opinion that the proposals contained in this document will enhance the securing of property rights in South Africa and therefore facilitate greater investor confidence in our economy.

The reality is that we need to grow the South African economy and that is only possible if investors have enough confidence in our legislative environment to invest in the economy.

Thank you

Henk van Wyk

President

Agri Northern Cape

