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04 July 2021

Attention –

1. South African Heritage Resources Agency (SAHRA)
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Heritage Crime –

The Ministers Nathi Mthethwa (DSAC) and Patricia de Lille (DPWI) – The Expropriation Bill, 2019, and Associated Socio-economic Impact Assessment (SEIA)

Summary –

The Socio-economic Impact Assessment (SEIA) conducted by the Department of Public Works and Infrastructure (DPWI) for the Expropriation Bill, 2019 [the Bill], was not made available to the public, and obtained through a Promotion of Access to Information Act, No. 2 of 2000 (PAIA 2000), request by Sakeliga (2021a): *"Sakeliga condemns both the apparent withholding of the document from public consideration as well as glaring deficiencies regarding its content."*

- Sakeliga (2021a) focussed initial attention, amongst others, on stakeholder concerns, stating that: "*The SEIA is supportive of confiscation of property without compensation and reveals various institutions' purported support for the proposal. In fact, the study claims there is unanimous support for the Bill among the entities it consulted."* Sakeliga questioned both the accuracy of stakeholders' comments contained in the SEIA, with the aim of verifying these, as well as alleged preferential stakeholder consultation, asking why some stakeholders were consulted and others not. Stakeholder concerns raised, including anticipated economic decline, not excluding -catastrophe, and the probability of further '*unintended consequences*' were not included in the SEIA (DPWI 2019), with commentary included reflective of Government Departments and civil groups closely aligned with the African National Congress' (ANC), or ruling party's, ideological convictions (Sakeliga 2021a, 2021b); Sakeliga (2021a) concluded that the SEIA - "*Amounts to nothing more than an extended opinion article… there are no real facts, data, or analysis to consider,"* and further thereto that it - "*Reads like a political justification for expropriation policy and does not really account for the cost of the proposal."* Whereupon Sakeliga (2021b) requested the DPWI to withdraw the SEIA with recommendations, including that a recommissioned, rigorous SEIA be conducted by independent specialists.
- As legal extension to the Bill the Constitution Eighteenth Amendment Bill, 2019, was published. Following publication of the 2019 Constitutional Amendment an unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, made it into the public arena (Morning Shot 2021).

Commentary by stakeholders so referred to by Sakeliga (2021a, 2021b) is outlined in the SEIA (DPWI 2019), Part 2.3 – Consultations. The said Part of the SEIA also containing commentary by Government Departments, and, most importantly for purposes of this report, the comment issued by the Minister Nathi Mthethwa, Department of Sport, Arts and Culture (DSAC) as follows:

a) Q – "*What do they see as the main benefits, Implementation / Compliance costs and risks?*"
   A (DSAC) – "*The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.*"
b) Q – "*Do they support or oppose the proposal?*"
   A (DSAC) – "*They support the proposal.*"
c) Q – "*What amendments do they propose?*"
   A (DSAC) – "*None.*"
d) Q – "*Have these amendments been incorporated in your proposal? If yes, under which Section?*"
   A (DSAC) – "*N/A.*"

Commentary by the Minister Mthethwa, DSAC, was so issued with direct reference to the (DPWI 2019):

- National Heritage Resources Act, No. 25 of 1999 (NHRA 1999); and the
- World Heritage Convention Act, No. 49 of 1999 (WHCA 1999).

(With the signed SEIA indicating no area of conflict with either the NHRA 1999 or the WHCA 1999.)

In summary, the SEIA (DPWI 2019) argues the Bill as aiming to facilitate access to land on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation, with the potential to reduce unemployment, poverty, homelessness, criminality and morbidity, whilst promoting entrepreneurship, food security and productivity of the nation in general. The aim of the Bill is so described as in accord with Government's core national priorities of: i) Social cohesion and security; ii) Economic inclusion; iii) Economic growth; and iv) Environmental sustainability. The Bill inevitably seeks to change behaviour to achieve its desired purpose; with the primary behaviour identified to be changed being that of private property owners, and the desired change the Bill intends to effect being a uniform expropriation framework for organs of State, including on national, provincial and local levels of government, to facilitate the acquisition of privately owned property in a cost effective manner, with compensation for expropriation in certain cases determined at nil, in order to enable the State to meet its socio-economic objectives. The SEIA furthermore claims the Bill's stance on expropriation in affirmation of the '*Rule of Law*' principle; - that the Bill will decrease incoherent and burdensome legislative regimes, whilst obviating the possibility of irrational expropriation through requisite consultation with affected parties, and further thereto that sufficient checks and balances in both government policy and different legislations are in place to keep such issues in check. Cost analysis of the Bill is centred on cost to the State; - including, amongst others, the management of an expropriation register, transfer-, notice- and conveyancing costs, property investigations and including the payment of compensation. Part 2.9 of the SEIA deals with risk management of the Bill, and listing, amongst others, disputes between Government Departments and -agencies as a possible risk that may arise due to competing / conflicting interests.

It is here argued that the Bill's SEIA (DPWI 2019) is insufficient for purposes of Social Impact Assessment (SIA), and specifically so with reference to the NHRA 1999, Section 38 – Heritage Resources Management; both the development extent (study site) and reasonably inferred impact on protected heritage resources call for caution, with the proposed development, the Bill (including the Constitutional Amendments), described as a development with a potential high impact on heritage.

From a heritage, and specifically a Socio-cultural Impact Assessment (SCIA) point of view, it is furthermore argued that the proposed development, the Bill and associated SEIA (DPWI 2019), represents, as it stands, a partially transparent formal / official forced acculturation process:

Where '*partially transparent*' refers to nondisclosure of the Bill's SEIA (DPWI 2019), - only recently, and very late in the process, partly remedied through the Sakeliga's SEIA PAIA 2000 request, the still pending Monitoring and Evaluation- and Implementation Plans, and the Medium Term Expenditure Framework (MTEF), the unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, and the absence of a Heritage Impact Assessment (HIA);

'*Formal / official*' refers to the planned acculturation program or -development being proposed legislation, - the Bill (including the Constitutional Amendments), intended for implementation.

'*Forced*' is to be understood within the framework of partial transparency, and the recognised Government intention to change behaviour, but through assessment scale and type (SEIA) not proportionate to the scale of intended impact nor the suitability of assessment type (HIA / SCIA) provided for by law (NHRA 1999), - and hence with '*unintended consequences*' on heritage / culture an expected outcome of the proposal; consequences which will be non-mitigatable and non-manageable, since being non-identified and thus not provided for within the current framework of the Bill and SEIA (DPWI 2019), and which inevitably will result in 'forced' (and reasonably argued non-transparent but 'intended') consequences. The force applied by Government can be described as diplomatic, - comprising consultation and associated legislative changes and amendments, as opposed to aggressive force. However, the history of opposition to the proposed rule, - the withdrawal in 2008 of a 2007 draft Policy (B16-2008), the 2018 rejection by Parliament of a 2013 revised Draft Bill (B4D-2015), and with opposition ongoing, spells of forced opposition, - with the force so used by opposition to the Bill similarly described as diplomatic in nature.

The process of cultural change proposed comprises a standard process of '*acculturation,*' where cultural exchange is intended to occur from the dominant or 'donor' culture to the 'recipient' culture: Within a composite (South African) cultural context the 'donor' culture is denoted by Government, democratically so elected by the majority of the people, with the 'recipient' culture represented by the primary target audience, private property owners, to bring the desired program of cultural exchange, a uniform expropriation framework to facilitate the acquisition of privately owned property, for purposes of public interest, in a cost effective manner about (DPWI 2019). Not only do the SEIA (DPWI 2019) exclude cultural assessment of the target or recipient culture, private property owners (primary recipient culture), but also of the '*beneficiary*' culture (secondary recipient culture); - in neither case do the assessment (SEIA) aim to, or holistically consider impact on the 16 basic universal aspects of culture, associated social units underlying the -aspects, or linkages and interlinkages connecting these, and extended to temporal frameworks associated with cultural exchange programs, and with transfer (or re-invention) of the integrated cultural complex between the primary and secondary recipient cultures inferred, but not assessed. The SEIA (DPWI 2019) is thus, with direct reference to holistic cultural consideration, described as contrary to the risk averse principle of impact assessment and will reasonably speaking result in '*unintended consequences*', with the unintended consequences preliminary described as imbalance to the integrated cultural complex, - where imbalance can refer to disturbance, maladaptation / -integration, fracturing, splitting, disintegration and the like, of both affected recipient (primary and secondary) cultures.

It is furthermore necessary to make brief mention of the broader context or '*environment*' within which SCIA is vested, and where 'environment' is defined as the natural environment, the cultural environment and the socio-economic relationship between the two, - albeit designating a commonality between SEIA and SCIA inquiry, method of inquiry vary because the aim of the assessment, socio-economic vs. socio-cultural, differs. From a SCIA point of view, considering the scale and potential impact of the proposed development, - the Bill (and Constitutional Amendments), any assumption of a static or near static cultural- or natural environment denotes potential

risk, with the projected dynamism of the environments central in determining socio-economic impact, or change in the socio-economic relationship between these environments.

- **Recommendations:**

➢ **It is recommended that DSAC makes available information, in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g), regarding signature to the SEIA (DPWI 2019) and approval thereof as per Table 1.**

It is recommended that the Minister Nathi Mthethwa, Department of Sport, Arts and Culture (DSAC) makes available information, in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g), regarding signature to the SEIA (DPWI 2019) and approval thereof as per Table 1. The presentation of information should include:

- A detailed explanation of DSAC commentary as contained in the SEIA (DPWI 2019), Part 2.3 – Consultations (see Table 1), and with direct reference to the NHRA 1999, not necessarily excluding the WHCA 1999 (as per Part 2.1 of the SEIA);
- Names, contact particulars and details of any organizations / parties / movements / individuals that have counselled the accused prior to or during consideration of the SEIA (DPWI 2019); and
- Names, contact particulars and details of any organizations / parties / movements / individuals that was counselled by the accused associated with the DSAC approval of, and comment to the SEIA (DPWI 2019).

➢ **It is recommended that SAHRA makes available the DPWI notification of the 'Planned Development' (the Bill), and the SAHRA response thereto, and / or other information that may so apply, with reference to the NHRA 1999, Sections 9(3)(f), 9(4), 9(5) and Section 38.**

It is recommended that SAHRA makes available the DPWI notification of the 'Planned Development' (the Bill), with DPWI as implementing agent / sponsoring Department, and the SAHRA response thereto, and / or other information that may so apply, with reference to the NHRA 1999, Sections 9(3)(f), 9(4), 9(5) and Section 38.

Should no such Notification of Intent to Develop (NID) have been received by SAHRA it is recommended that SAHRA requests the Minister Patricia de Lille, Department of Public Works and Infrastructure (DPWI), to make available information in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g) regarding the non-submission of a NID.

➢ **It is recommended that SAHRA requests a Heritage Impact Assessment (HIA) to be conducted by DPWI as implementing agent / sponsoring Department, in terms of the NHRA 1999, Section 38, for the Bill.**

1. It is recommended that the Minister de Lille, DPWI, withdraws, with immediate effect, the SEIA (DPWI 2019) for the Bill (and implying requisite temporary repealment of the Bill), based on:
   - Non-transparency of the SEIA for public commenting purposes, and the recent making available thereof through the PAIA 2000 Sakeliga (2021) request; and
   - The identified need for a Heritage Impact Assessment (HIA) with the Bill argued as a 'Planned development' subject to the NHRA 1999, Section 38, HIA process, with reference to both development extent (study site) and reasonably inferred impact on protected heritage resources, and with the Bill described as a development with a potential high impact on heritage.

2. It is recommended that SAHRA requests a HIA to be conducted by DPWI as implementing agent / sponsoring Department, and as compulsory heritage compliance requirement to the 'Planned Development', the Bill.
   - The requested HIA is argued as a stand-alone HIA, to be called for in terms of the National Heritage Resources Act, No. 25 of 1999 (HRA 1999), Section 38 – Heritage Resources Management.
   - With reference to the NHRA 1999, Section 38(1), it is argued that the Bill will:
     1) Impact (have effect) on a surface area, the extent of which will be the geographical extent of South Africa [with reference to the NHRA 1999, Section 38(1)(a) – 38(1)(d)]; and
     2) Where reasonably inferred / known impact on heritage resources, as defined and protected by the NHRA 1999 will occur, with inferred resource impact preliminary summarized as - "*The legislation* [NHRA 1999] *requires that all heritage resources, that is, all* ***places*** *or* ***objects*** *of* ***aesthetic, architectural, historical, scientific, social, spiritual, linguistic*** *or* ***technological*** *value or significance are protected. Thus any assessment should make provision for the protection of* ***ALL*** *these heritage components, including* ***archaeology****, shipwrecks,* ***battlefields, graves,*** *and* ***structures over 60 years, living heritage*** *and the collection of* ***oral histories, historical settlements, landscapes, geological sites, palaeontological sites*** *and* ***objects***" (SAHRA 2007); thus notwithstanding the NHRA 1999, Section 38(1)(e) necessity for a category of development provided for in Regulations by SAHRA or a PHRA, but in accordance with resources directly protected by the NHRA 1999, and in order to ensure protection of the national estate (NHRA 1999, Section 3) in accordance with the general principles for heritage resources management, as per the NHRA 1999, Section 5, in general, and with specific reference to the NHRA 1999, Section 5(7)(a) – 5(7)(f).

- It is recommended that the HIA: -
  - Include at minimum a comprehensive Desktop study; and
  - The Phase 1 component of the HIA be focussed on, though not limited to, the NHRA 1999, Section 38(3):
    (d) An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
    (e) The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.
- The purpose of the HIA is to inform: -
  1) The HIA provides heritage specific information on a proposed development to SAHRA, mandatory responsible for the implementation of the NHRA 1999, and as Competent Authority with reference to Section 38 – Heritage Resources Management, for purposes of responsible decision making; and
  2) The HIA should be made available to Interested & Affected Parties (I&AP) during the 45 day commenting period (re-submission of the Bill), and including during the full Public Participation Process (PPP) of the Bill, for purposes of public evaluation and comment.

NOTE 1: SAHRA retains the right to diverge the HIA to PHRA level, be it to provincial or smaller geographic units, such as district- or local municipal level, or any other defined cultural or heritage units for HIA management purposes.

NOTE 2: It is recommended that DPWI makes available to SAHRA the reasons why the SEIA (2019) was not published for public comment as per the SEIAS Guidelines (DPWI 2015), and for this information to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 3: It is recommended that DPWI makes available to SAHRA the Monitoring and Evaluation Plan for the draft Bill as per the SEIA (DPWI 2019), Part 2.10.e), and for the Monitoring and Evaluation Plan to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 4: It is recommended that DPWI makes available to SAHRA the Implementation Plan for the draft Bill as per the SEIA (DPWI 2019), Part 2.10.f), and for the Implementation Plan to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 5: It is recommended that DPWI / DSAC makes available to SAHRA particulars of the areas of linkages: Sections 46 and 30, with reference to the NHRA 1999 and the WHCA 1999 respectively, as per Part 2.1 of the SEIA (DPWI 2019), and for this information to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 6: It is recommended that DPWI makes available to SAHRA the Medium Term Expenditure Framework (MTEF) as per Part 2.7.a) of the SEIA (DPWI 2019), and for this information to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 7: It is recommended that '*Specialist Declarations of Interest*' be considered by SEIAS to avoid, and provide a platform for investigation, in the event of political or party-political bias concerns being raised, - not limited to SEIA assessors, but extended at minimum to Government Department officials signing off on a SEIA.

NOTE 8: It is requested that SAHRA makes available for purposes of HIA, upon request, the Cultural Heritage / Conservation Management Plan (CMP) of DSAC as per the Regulations (2017) in terms of the NHRA 1999, Section 9, for cultural heritage resources, the maintenance and conservation of which is the responsibility of State Departments and supported bodies, and thus so applicable to DSAC. Should no such DSAC CMP exist, is it requested that SAHRA instructs the DSAC to commission the relevant CMP, - and for the CMP to be made available, timeously and upon request, for HIA purposes.

NOTE 9: It is similarly requested that SAHRA makes available for purposes of HIA, upon request, the Cultural Heritage / Conservation Management Plan (CMP) of DPWI as per the Regulations (2017) in terms of the NHRA 1999, Section 9, for cultural heritage resources, the maintenance and conservation of which is the responsibility of State Departments and supported bodies, and thus so applicable to DPWI. Should no such DPWI CMP exist, is it requested that SAHRA instructs the DPWI to commission the relevant CMP, - and for the CMP to be made available, timeously and upon request, for HIA purposes.

The deadline for Parliament to report back to the House on the Bill is 30 August 2021 (Merten 2021). It is requested that SAHRA address heritage compliance concerns raised in this report with immediate effect, and prior to said date, 30 August 2021.

This report is made to SAHRA, mandatory responsible for the implementation of the NHRA 1999, directly on SAHRIS, and without any contact with the accused's office.

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Appendix 3:
The Constitution Eighteenth Amendment Bill, 2019 (Published).

Appendix 4:
The Constitution Eighteenth Amendment Bill, 2021 (Unpublished / Leaked).

1) The Accused

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2) Introduction – The Heritage Crime Report

- **The Expropriation Bill, 2019, and Associated Socio-economic Impact Assessment (SEIA)**

On 7 June 2021, Sakeliga, an independent business community, published a report on the then recently obtained Socio-economic Impact Assessment (SEIA) for the Expropriation Bill, 2019 [the Bill]. The Sakeliga (2021a) report states:

> *"The business group Sakeliga has just released a government impact study on the Expropriation Bill obtained through a Promotion of Access to Information Act (PAIA) request. It appears that prior to Sakeliga's PAIA-request, the study has been withheld from public consideration.*
>
> *The document, a socio-economic impact assessment (SEIA) initiated by the Department of Public Works and Infrastructure, outlines government's assessment of the costs and benefits of the controversial Expropriation Bill. Impact Assessments are required in terms of a 2015 Cabinet decision to ensure that the costs of legislative and policy changes, as in the Expropriation Bill, do not outweigh benefits.*
>
> *The SEIA is supportive of confiscation of property without compensation and reveals various institutions' purported support for the proposal. In fact, the study claims there is unanimous support for the Bill among the entities it consulted.*
>
> *Sakeliga is imploring the groups listed in the document – which include AgriSA, the Banking Association of South Africa, and the American Chamber of Commerce, among others – to verify that the study accurately records their supposed support for the Bill. At the same time, it appears that opposing voices, from organizations such as Sakeliga, the Institute of Race Relations, and the Free Market Foundation, among others, are not considered in the SEIA, thus creating the façade of unanimous support among civil society for the Bill.*
>
> *Sakeliga condemns both the apparent withholding of the document from public consideration as well as glaring deficiencies regarding its content.*
>
> *Gerhard van Onselen, Sakeliga Senior Analyst, notes that 'Impact studies are typically measured against international standards. The present assessment, in our estimation, does not meet the benchmarks of a rigorous regulatory impact assessment. It rather reads like a political justification for expropriation policy and does not really account for the cost of the proposal.'*

Among other things, the document claims banks will benefit from an increase in their mortgage books due to expropriation and state policy. Sakeliga regards this claim as factually unfounded.

'Moreover,' continues Van Onselen, 'the document also does not model the impact of expropriation policies on for instance GDP trend growth, unemployment, investment, and poverty. Instead, it only concerns itself with direct cost to the state – for instance, defending against litigation – and not economic consequences.'

In terms of the analysis on whether the Bill will deter investment, the document merely dismisses investor concerns by claiming such concerns are 'weakly supported,' noting that, there is 'no empirical evidence' to support an observation of deterrence of investment. Yet, Sakeliga notes that and since the previous administration a weakening (flattening) trend of investment by private enterprises are clearly visible. Moreover, the Ramaphosa administration did little to recover broad metrics such as growth in private capital formation by business enterprises.

Martin van Staden, Legal Fellow at Sakeliga, remarks that Sakeliga's comments should not be construed as disagreement with findings of a government report. 'There is nothing of substance to disagree with, as the document amounts to nothing more than an extended opinion article. We might disagree with the expressed opinion, but there are no real facts, data, or analysis to consider. This is not entirely unexpected, because in actual fact there are no benefits or advantages to a legal regime that deprives rights in the way that the envisaged Expropriation Bill would.'

The impact study claims that the Expropriation Act of 1975 treats owners unfairly and South Africa's expropriation regime must be aligned with the Constitution. The study regards the proposed Expropriation Bill as the answer to these challenges.

'While the 1975 Act is far from perfect, at present it offers more protection to property owners than the proposed Bill does. It guarantees the payment of solatium – money for inconvenience – in addition to market value as a baseline for compensation. The new Bill removes solatium, streamlines the expropriation process for government at the expense of property owners, and even allows government to confiscate property without compensation,' argued Van Staden. 'The Bill can in no way be described as fair or constitutionally-aligned.'

Sakeliga is considering further action to address the obfuscation of adverse economic realities at the hand of the so-called 'study'".

Following the initial report, Sakeliga requested a withdrawal of the SEIA, with Sakeliga (2021b) reporting:

"*The business group Sakeliga is calling on the Department of Public Works and Infrastructure to withdraw its purported socio-economic impact assessment (SEIA) on the Expropriation Bill and apologise for its negligent misrepresentation of the perspectives of civil society organisations on the Bill.*

Sakeliga demands, furthermore, that government takes note, in future impact assessments, of the serious concerns raised by civil society about the detrimental and unintended consequences of bad policy decisions.

Various groups and citizens, while consulting with government on the Expropriation Bill, pointed to the potential of economic catastrophe, should the Bill, alongside the constitutional amendment to allow confiscation without compensation, be adopted. None of these concerns were recorded in the SEIA and in the event that the SEIA did note concerns, it dismisses them out of hand without honest engagement or reasonable independent analysis.

As a result of these material defects, the validity of the consultative process and the advice given to Cabinet on the strength of the SEIA are called into question.

Sakeliga has reviewed the parliamentary submissions of several of the organizations mentioned by the SEIA as providing support for the Expropriation Bill.

'It is evident,' said Martin van Staden, Legal Fellow at Sakeliga, 'that the assessment contains a gross misrepresentation of the views of civil society. Many of the groups referred to as supporting the Bill in the assessment, in fact do not support the Bill.'

One mentioned organisation, Agri South Africa, has already clarified that it does not support the Bill, despite government's assessment that it does.

The impression government apparently hopes to create with the SEIA, which was reviewed and endorsed by the Department of Public Works and Infrastructure, the Department of Planning, Monitoring and Evaluation, and the Presidency, is that the Bill is widely supported. Government hopes to use this non-existent 'support' to reassure concerned investors, foreign governments, and sceptical citizens. In fact, only government departments and civil groups closely aligned with the ruling party's ideological convictions have been explicit about their approval of the Expropriation Bill.

According to Gerhard van Onselen, Senior Analyst at Sakeliga, confiscation of property is a harmful policy. 'Through the Bill, government intends to seize property from some, supposedly, to give to others, or to control in state custodianship. In doing so, selected recipients may indeed gain property, but all may suffer from the detrimental and impoverishing effect a general assault on property rights will bring about. To consider a 'net effect,' government should soberly reconsider its evaluation of perceived benefits and, especially, the harms of this policy, preferably in a recommissioned, independent, and rigorous SEIA.'

Sakeliga recently unearthed the SEIA by way of a Promotion of Access to Information Act (PAIA) request to the Department of Public Works and Infrastructure. Beforehand, the SEIA had not been seen by civil society or by the public. More information on Sakeliga's initiative may be found here."

As legal extension to the Bill the Constitution Eighteenth Amendment Bill, 2019, was published. Following publication of the 2019 Constitutional Amendment an unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, made it into the public arena (Morning Shot 2021).

- **The Bill's SEIA**

Key sections of the Bill's SEIA so referenced by Sakeliga (2021a, 2021b) are briefly recapped as:

The said SEIA (DPWI 2019) holds the purpose of the Bill as the intention to empower the State to effectively remove hitherto institutionalised socio-economic barriers to access both property and natural resources, and claims the removal of the said socio-economic barriers to require a special measure, the Bill, in order to grant the State extraordinary authority to compulsorily take immovable property from persons and corporations for use in the public interest. The public interest is expressed as comprising mainly land and water reforms, the creation of a sustainable environment and sustainable human settlements. The outcome of the Bill is postured as enabling South Africans to access property and natural resources on an equitable and fair footing.

The Bill primarily deals with amendment of Section 25(8) of the Constitution, 1996. The Department of Public Works and Infrastructure's (DPWI) mandate to review the Expropriation Act, No. 63 of 1975 (EA 1975), dates back to a Cabinet approval thereof, dated 15 September 2004. In November 2007 a Draft Policy on the Expropriation Bill was gazetted for public comment, followed by workshops and public hearings in Parliament in 2008, but the Bill (B16-2008) was withdrawn to allow for further consultations. In March 2013 a revised Draft Bill was gazetted for public comment and submitted to Parliament in February 2015. On 26 May 2016 the Bill (B4D-2015) was passed into law, but following objections the President remitted the Bill to Parliament. Parliament deliberated on the matter and on 4 September 2018 rejected the Bill, after which a motion was passed to establish a Joint Constitutional Review Committee to look into the feasibility of amending Section 25 of the Constitution to explicitly provide for expropriation of property with nil compensation (DPWI 2019).

The SEIA (DPWI 2019) argues the Bill as aiming to facilitate access to land on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation, with the potential to reduce unemployment, poverty, homelessness, criminality and morbidity, whilst promoting entrepreneurship, food security and productivity of the nation in general.

The SEIA (DPWI 2019) claims the Bill's stance on expropriation in affirmation of the '*Rule of Law*' principle; that the draft Bill will decrease incoherent and burdensome legislative regimes, but will obviate the possibility of irrational expropriation through requisite consultation with affected parties.

Part 2 of the SEIA (DPWI 2019) deals with other laws and responsible Departments linked to the Bill, and including amongst others:

1) Department of Sport, Arts and Culture (DSAC) – National Heritage Resources Act, No 25. of 1999 (NHRA 1999) (Area of linkage: Section 46); and
2) DSAC – World Heritage Convention Act, No 49 of 1999 (WHCA 1999) (Area of linkage: Section 30).

The SEIA indicates no area of conflict with either the NHRA 1999 or the WHCA 1999.
[**NOTE:** Areas of linkages not defined or described in the SEIA (DPWI 2019)].

Part 2.2 of the SEIA (DPWI 2019) states that the Bill will inevitably seek to change behaviour to achieve its desired outcome; with the primary behaviour identified to be changed being that of private property owners, and the desired change the Bill intends to bring about being a uniform expropriation framework for organs of State, including on national, provincial and local levels of government, to facilitate the acquisition of privately owned property, in a cost effective manner, with compensation for expropriation in certain cases determined at nil, in order to enable the State to meet its socio-economic objectives.

Part 2.3.a) lists a number of Government Departments, business and labour stakeholders engaged in consultation during the drafting process, including DSAC, with DSAC's commentary recorded as (DPWI 2019):

Department's Name	**What do they see as the main benefits, Implementation / Compliance costs and risks**	**Do they support or oppose the proposal?**	**What amendments do they propose?**	**Have these amendments been incorporated in your proposal? If yes under which section?**
DSAC (Arts and Culture)	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal	None	N/A

Table 1: Stakeholder Consultation: Summary of DSAC comments (after DPWI 2019)

Potential disagreements identified during the Stakeholder Engagement process are briefly listed in Part 2.3.b) of the SEIA as (DPWI 2019):

- Government officials may abuse the powers in the legislation:

The apprehension appears to be misplaced. There are sufficient checks and balances in both government policy and different legislations to keep the issue in check. Continuous rights and obligations advocacy drives should be used to get persons to know the relevant legal instruments (Support – Weak; Opposition – Very strong).

- Expropriation without compensation clause is unconstitutional:

Sound legal advice has been obtained on this matter. As currently drafted this clause complies with the Constitution. Doubts expressed in this regard could be emanating from an uninformed point of view. The entire Expropriation Bill, 2019, will be tested in the courts for its constitutional soundness once it is passed into law (Support – There is little support for the opposition; Opposition – There is strong support for the Bill).

- The Bill will deter investors:

There is no empirical evidence to support this observation. Investors' interest is whether the Bill complies with the Constitution. They are also interested in a stable and safe investment environment. South Africa meets this requirement based on its strong adherence to the '*Rule of Law*' principle (Support – Weak support for opposition; Opposition – Strong support for the Bill).

Part 2.7 of the SEIA (DPWI 2019) deals with the cost to Government of the Bill, and including:

Department	Budget	Staffing
Public Works and Infrastructure (DPWI)	Expropriation is a function that has been there and is catered for in the existing budgets. The requirement of an expropriation register will require a budget. There may be some cost reduction where an expropriation takes places with nil compensation.	There may be a need for additional capacity due to increased workload especially the administrative part of the expropriation register.

Table 2: Summary of the draft Bill's cost to the DPWI [1] (after DPWI 2019)

Agency / Institution	Nature of Cost (from Question 2.6)	What has been done to minimise the cost?
DPWI	Payment of compensation, transfer costs, notice costs, property investigation and conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.

Table 3: Summary of the draft Bill's cost to the DPWI [2] (after DPWI 2019)

Part 2.9 of the SEIA (DPWI 2019) centres on risk management and potential disputes, with part 2.9.c)(a) stating, amongst others: -

- Disputes between Government Departments and Government agencies:

Disputes between Government agencies could arise from competing / conflicting service delivery interests.

With the nature of the abovementioned possible disputes briefly summarized as (DPWI 2019):

1) Competing service delivery;
2) Divergence of interests in respect of the purpose or quantum of compensation or non-compensation; and
3) Land Reform context: Feasibility or non-feasibility of restoration of dispossessed property.

Part 2.10.d) of the SEIA (2019) tables the results and key indicators to be used during monitoring of implementation of the Bill as:

Results	Indicators	Baseline	Target	Responsibility
Impact: Long term result (change emanating from the implementation of the proposal in the whole of society of(?) parts of it)	Developments arising from property expropriation per government programme	10	10	DPWI
Outcome: Medium term result (what beneficiaries achieve as a result of the implementation of the proposal)	Number of property expropriations per financial year	10	10	DPWI

Table 4: Monitoring – Results and key indicators (after DPWI 2019)

Part 2.10.e) of the SEIA (DPWI 2019) lists a number of sample evaluation questions for purposes of an outcomes-based evaluation as:

1) What was the quality of proposal design / content? (Assess relevance, equity, equality, human rights);
2) How well was the proposal implemented and adapted as needed? (Unitise the Monitoring and Evaluation Plan to assess the effectiveness and efficiency);
3) Did the proposal achieve its intended results (activities, outputs and outcome) as per the Monitoring and Evaluation Plan?
4) What unintended results (positive and / or negative) did the implementation of the proposal produce?
5) What are the barriers and enablers that made the difference between successful and failed proposal implementation and results?
6) How valuable were the results of your proposal to the intended beneficiaries?

In Part 2.10.f) of the SEIA (DPWI 2019) it is requested that a comprehensive Implementation Plan be submitted.

Part 2.10.g) of the SEIA (DPWI 2019) deals with the identification of areas where additional research would further understanding of the costs, benefits and / or legislation under the following headings:

- Notices of expropriation;
- Assessment of compensation;
- Urgent expropriations;
- Withdrawal of decision to expropriate; and
- Dispute resolution.

- **SEIA and the SEIAS**

The SEIA (DPWI 2019) of the Bill is to be understood in the direct context of the Socio-economic Impact Assessment System (SEIAS). To briefly explain; - in February 2007 Cabinet, following investigation by the Presidency and National Treasury regarding concerns related to the full costs and impact on the economy, adopted a policy of consistent assessment of the socio-economic impact of policy initiatives, regulations and legislation. Resultantly a Cabinet decision, dated 01 October 2015, decreed all Cabinet Memoranda seeking approval of draft policies, regulations and legislation to be accompanied by a compulsory impact assessment signed off by the SEIAS Unit. Cabinet Memoranda so submitted are to include a summary of the main findings of the final impact assessment with the full report annexed. Policies and regulations internally signed by Ministers are likewise subject to SEIAS. The implementation of SEIAS is overseen by an interdepartmental Steering Committee made up of senior officials of the Presidency (Cabinet office) and the Departments of Planning, Monitoring and Evaluation (DPME), Economic Development (EDD), National Treasury, Trade and Industry (DTI), Social Development (DSD), State Security (SSA) and the Chief State Law Advisors, with DPME responsible for the establishment of the SEIAS Unit, as well as the implementation, quality control and capacity support for SEIAS across Government (DPME undated).

* * *

The SEIAS Guidelines (DPME 2015) introduces the SEIAS as to:

1) Explain the reasons for introducing a more consistent system for assessing the impact of new policy initiatives, regulations and legislation on core Government policies, even when the rules so considered are not directly linked to those priorities; and
2) Outline the key procedures and techniques for SEIAS.

And further stating that: "*The guidelines should make it possible to conduct at least an initial, mostly qualitative assessment of a proposed law or regulation.*"

The role of SEIAS is defined as (DPME 2015):

1) To minimise unintended consequences from policy initiatives, regulations and legislation, including unnecessary costs from implementation and compliance, as well as from unanticipated outcomes; and
2) To anticipate implementation risks and encourage measures to mitigate them.

With the primary challenge to SEIAS explicated as vested in the deeply unequal South African society, resulting in unequal policy impact on society, thus necessitating more than a simple cost-benefit analysis, and arguing that impact assessments based on cost-benefit analysis should be extended to different groups, whilst acknowledging that some costs will be unavoidable, but admissible in order to achieve Government's broader national priorities. SEIAS furthermore recognises that many costs and benefits cannot be realistically quantified, - it therefore focusses on an analytical cost-benefit analysis whilst aiming to identify specific areas where quantification would assist in evaluating policy impacts.

Cost analysis for proposed rules, - policy initiatives, regulations and legislation, the DPME (2015) argues, is rooted in the argument that new rules aim to change the behaviour of stakeholders, both inside and outside of Government, in order to address a recognised social problem. However, implementation of rules can lead to unintended consequences –

- Through inefficient implementation mechanisms;
- Where stakeholders face excessive compliance costs;
- By the over- or underestimation of benefits associated with the proposed rule in question; and
- By the underestimation of risks involved, or alternatively stated, by the overestimation of the likelihood of success in the achieving of anticipated benefits.

SEIAS, it is argued, provides a more efficient way to change behaviour, without engaging in costly sanctions or incentives, or detailed reporting systems. It is often more effective to incentivise groups other than the State, to monitor and support compliance to the rule, or the intended change in behaviour. Compliance cost to stakeholders takes two primary forms: i) The regulatory burden; and ii) The cost of behavioural change itself. The regulatory burden refers to reporting and processing requirements, applications for permits, permissions, licences and the like. The planned behavioural change is always desired to proceed as effortlessly as possible, especially when compared with the anticipated benefits. But drafters may easily overestimate or underestimate the costs and benefits of the new rule and can in cases be over optimistic in achieving success without rational assessment of variables involved. Risks to success can also arise from economic, political and social factors outside the control of the drafter or State, or simply not be covered by the rules of SEIAS (DPME 2015).

SEIAS is a tool used to support Government in its core national priorities and in so doing requiring new rules, - policy initiatives, regulations and legislation, to be measured in terms of their impact on (DPME 2015):

- Social cohesion and security (safety, food, financial, energy etc.);
- Economic inclusion;
- Economic growth; and
- Environmental sustainability.

SEIAS so aims to predict how new rules are likely to affect Government's national priorities, - difficult cases included: SEIAS therefore provides a reasoned and effective measure to strike an appropriate and sustainable balance between national imperatives. But the challenge in achieving the national priorities is that it inevitably imposes some cost on some social groups: "*After all,*" states SEIAS (DPME 2015), "*these priorities have been adopted because the economic and social systems inherited from apartheid reproduce unsustainable inequalities and exclusion.*" In accordance SEIAS assists in determining when the State's action justify the cost of transformation and whether implementation costs have been minimised as far as possible. Policy initiatives, regulations and legislation are argued to have varying impact of different social groups, with these groups identified as:

- The richest 10% of households, controlling almost half of the national income and virtually all formal enterprises, and the poorest 40% of households who accrue less than 6% of national income;
- Metros and other major urban areas against the poorest regions of the country, being mainly the former homeland areas;
- Employers and employees;
- Women and men, as well as youth and older people; and
- Existing industries, which have a range of established State support, as well as new industries, which may require new measures such as infrastructure, skills development and access to capital.

As stated in the SEIAS (DPME 2015): - "*In sum, given complex government priorities in a divided society, SEIAS must generate an assessment of the impacts of a proposed rule that goes beyond a simple cost-benefit analysis. It must help decision makers to understand and balance the socio-economic impact of proposals on different constituencies. It thus constitutes a tool to improve policy proposals, not a simple measure of their net value.*"

The six main stages of SEIAS are listed as (DPME 2015):

1) The decision to develop (or amend) policies, regulations or legislation in order to address an identified social or economic problem;
2) An initial assessment involving: i) The identification of options for addressing the problem; and ii) A rough evaluation of the costs and benefits of each option for different social or economic groups;
3) Agreement on the basic option and finalisation of the draft rule, the draft policy initiatives, regulations or legislation, in a process that includes appropriate consultation and a continual review of the impact assessment as the proposal evolve;
4) Development of a final impact assessment that provides a detailed evaluation of the likely effects of the rule in terms of implementation and compliance costs, as well as the anticipated outcome;
5) Publication of the draft rule for public comment and consultation with stakeholders, with the final assessment attached; and
6) Revision of the draft rule and final assessment based on comment from the public and stakeholders, if required, and submission of the draft rule for approval with the final assessment attached.

SEIAS is so claimed not to be a once-off exercise, but an ongoing analytical process that happens alongside and informs the development of policies, regulations and legislation, where costs, benefits and risks of draft rules are continuously assessed.

SEIAS analysis of a draft rule will not dictate specific remedies: This is of particular importance where rules have been agreed with stakeholders, and in so doing limiting the ability to change them. SEIAS so serves to primarily inform the position of the State in engaging with stakeholders (DPME 2015).

SEIAS applies to (DPME 2015):

1) New or to be amended primary legislation, although the impact assessment need not be published for matters affecting national security;
2) Subordinate legislation that can have a significant impact on society;
3) Significant policy proposals, regulations and legislation; and
4) Major amendments to existing policies, regulations, legislation and plans that have country coverage with high impacts.

Every new rule should be subject to an initial assessment, proportionate to the likely impact of said rule: More in-depth analysis and broader consultation with stakeholders should be undertaken for proposals where the initial assessment suggests substantial implementation- or compliance costs, outcomes, risks or political sensitivity, than in cases where proposals will have ostensibly less significant impacts (DPME 2015).

The following type regulations are exempted from the SEIAS (DPME 2015):

- Automatic increases in statutory fees as long as the increase is at or below the headline inflation rate measured by the Consumer Price Index; and
- Regulations giving effect to budget decisions *i.e.* the Division of Revenue Act, No. 4 of 2020 (DRA 2020).

(Exemptions are however subject to assessment and engagement with sponsoring Departments).

Information contained in the published SEIA should be suitable for public consumption, in accordance with provisions of the Promotion of Access to Information Act, No. 2 of 2000 (PAIA 2000). Where an assessment cannot be published due to classified information, the drafters must state their reasons (DPME 2015).

The responsibility for developing a SEIA under the SEIAS is vested with the sponsoring Department, with the SEIA to be conducted in-house or in conjunction with external experts, and with the DPME's SEIAS Unit serving an oversight function, - implementation, quality control and capacity support, to Departments, as and where required. Departments may contract out elements of the technical analysis, but the SEIA and its conclusions should be finalised by Department officials. The before mentioned condition is argued based on complete assessments from consultants having had resulted in two main identified concerns: i) The product often does not adequately reflect Government priorities; and ii) It is frequently subject to allegations of bias. The Departments are responsible for (DPME 2015):

1) Ensuring that their policy making processes conform with SEIAS, and starting with the initial impact assessment immediately after their mandate to develop a process is received;
2) Ensuring that the effort expended on the SEIA is proportional to the likely impact of the new rule (policy, regulations or legislation);
3) Both the initial- and final impact assessments (SEIA) must use the formats and methods established by the DPME Guidelines;
4) Publication of the draft final assessment (SEIA) with the new rule when the rule opens for public comment, excepting cases where sound reasons (*i.e.* security, confidentiality etc.) can be provided for not doing so.
5) Attachment / annexing of the final assessment (SEIA) to the new rule at the time of submission for approval by the relevant authorities, be the authority Cabinet or a Minister of Parliament. Directors General and Ministers are expected to sign for the quality of the said SEIA on behalf of their Departments, at the time of submission to Cabinet.

The purpose of any whichever impact assessment is to provide an estimate of the likely effects of an action that has not yet been undertaken. In order to achieve that aim, assessments analyse the existing situation so as to forecast the effects of change, in the case of SEIA under the SEIAS, the effects of a proposed rule, - the policy initiative, regulations or legislation in question. SEIAS so aims to make these estimates as reliable as possible, in order to improve, and not to simply accept or reject the proposed rule: Cost-benefit analysis aims to describe, not necessarily to quantify, and to identify the main risks in achieving the desired outcome, and including ways to mitigate the risks (DPME 2015).

SEIAS builds on two fundamental approaches for evaluation purposes (DPME 2015):

- Technical analysis, where researchers identify from their investigations, published studies and more or less complex simulations how the new rule will likely impact different groups in society; and
- Participatory research, mostly through consultation with stakeholders, in order to provide an assessment of the impact of the rule from those most affected and knowledgeable about its context.

Drafters are therefore required to manage the following challenges in the assessment process (DPME 2015) –

Firstly, as already mentioned, it is important that the impact assessment process is proportionate to the likely impact of the proposed rule under consideration;

Secondly, biases, especially in an unequal society, must be managed, - and including biases on behalf of both the assessors and respondents. Cost-benefit analysis are to be linked to the different social groups, whilst considering the proposed rule in direct relation to the core national priorities of: i) Social cohesion and security; ii) Economic inclusion; iii) Economic growth; and iv) Environmental sustainability, - and specifically so with reference to Government's long-term interest in the majority of the population and the country as a whole;

Thirdly, it is premised that any new rule inevitably imposes burdens and restrictions on those who benefitted from previous laws and structures. Thus, in order to achieve a more equitable and inclusive society, systematic changes in the behaviour of formal enterprises and relatively well-off communities are necessary; small sacrifices on their part can lead to significant improvements in the condition of the majority, with the challenge being to identify when burdens of change imposed on such a social group, or -groups, loom so large that they could lead to excessive cost to society, through for ex. disinvestment by business, or loss of skill to emigration. Any assessment therefore also aims to manage risks: i) Through the identification of ways to reduce the burdens associated with change; and ii) Through the identification of benefits to offset the risks;

Fourthly, assessment should support the alignment and integration of Government strategies through the identification of economic impacts on non-economic measures, as well as the social effects of economic measures. Likewise, assessments for rules targeting infrastructural development, social services, the environment and / or security should include an estimate of the impact on economic growth, investment, employment creation and equity, and rules designed to affect economic activities should also be assessed in terms of their environmental impact, social cohesion and security; and

Fifthly, and lastly, drafters need to determine the extent of quantification and provide a broad qualitative analysis of the assessment. As already noted, any quantification necessarily involves estimates, since the assessment relies on predicted outcomes. For many assessments only a broader understanding of the magnitude of impact based on an evaluation of how the measure will affect different social groups is required, - after all, the aim of SEIAS is not to arrive at a numerical judgement, but to clarify decisions and focus discussion. Even if no definitive cost-benefit analysis is possible, the assessment should highlight major concerns and opportunities.

(Modelling can prove a useful method in assessment. However, with cognisance to the type modelling used, and the suitability thereof for the type assessment, - concerns inherent in modelling as predictive measure is known and should be recognised. For most new rules the cost and time required for modelling outweigh the benefits.)

The DPME SEIAS Guidelines (2015) list seven '*Frequently Asked Questions,*' five of which are relayed for purposes of this report:

a) Q – "*Who should do the impact assessment?*"
A – "*The impact assessment should be managed by the drafters of the policy. As a rule, they should carry out the initial assessment, which should be approved by their Director General. Where the proposal affects other departments or government agencies, they should discuss the assessment with these bodies.*

Who does the final assessment depends on how complex an analysis is required, which in turn depends largely on the scope of the proposal being assessed. For major interventions, it is desirable to ensure an expert analysis, possibly during a modelling exercise. As a rule of thumb, the drafters should seek outside expertise to help fill out sections of the form that they cannot complete using their own knowledge."

d) Q – "*All this research will just stop us from implementing anything.*"
A – "*SEIAS permits drafters to adjust the scope of the assessment process to the significance of each proposal. In any case, a failure to take unintended consequences into account can mean policies become unnecessarily contentious, impose large undesirable costs on society, or are simply ignored.*"

e) Q – "*My job is to provide a specific service. Why should I care about the priorities of other Departments that are listed in the assessment format?*"
A – "*The failure to align Government around core priorities has undermined service delivery and economic transformation. Taking the impact on national priorities into account with every measure, even if it is not directed at those priorities, is critical to improve the alignment of Government actions. The process also builds in a quad pro quo, since other Departments also have to take into account your priorities, as long as they align with the national mandate.*"

f) Q – "*Will the impact assessment count even if I can't quantify costs and benefits?*"
A – "*Often only a qualitative analysis of the impact of a policy is possible or desirable. That kind of estimate improves the policy process by pointing to areas where costs and risks can be moderated or where they are patently excessive relative to the anticipated benefits of the policy. The impact assessment should serve more to focus discussion and identify areas of debate and improvement than to provide a fully quantified accounting.*"

g) Q – "*How should I quantify costs and benefits if they're intangible or very broad or long term? For instance, improved EDC leads to better educational outcomes and income over a person's whole lifetime. That can't be meaningfully put into a single number?*"
A – "*Often it is important to point to the existence of major costs and benefits, even if they can't be fully qualified. Again, the aim is mostly to ensure that policy makers take these costs and benefits into account. There are techniques for quantifying them if it proves really necessary, but usually it is less important than having a broad understanding of the issues involved.*"

3) Legislation: The National Heritage Resources- and World Heritage Convention Acts, 1999

The South African Heritage Resources Agency (SAHRA) is an agency of the Department of Sport, Arts and Culture (DSAC) (sahra.org.za) and mandatory responsible for the implementation of the National Heritage Resources Act, No. 25 of 1999 (NHRA 1999).

- **NATIONAL HERITAGE RESOURCES ACT, NO. 25 OF 1999**

PREAMBLE

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual wellbeing and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character.

Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.

DEFINITIONS

2 In this Act, unless the context requires otherwise –

(iii) "Conservation" in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

(vi) "Cultural significance" means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance;

(viii) "Development" means any physical intervention, excavation, or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the nature, appearance or physical nature of a place, or influence its stability and future well-being, including—

(a) Construction, alteration, demolition, removal or change of use of a place or a structure at a place;
(b) Carrying out any works on or over or under a place;
(c) Subdivision or consolidation of land comprising, a place, including the structures or airspace of a place;
(d) Constructing or putting up for display signs or hoardings;
(e) Any change to the natural or existing condition or topography of land; and
(f) Any removal or destruction of trees, or removal of vegetation or topsoil.

(xvi) "Heritage resource" means any place or object of cultural significance;

(xxi) "Living heritage" means the intangible aspects of inherited culture, and may include –

(a) Cultural tradition;
(b) Oral history;
(c) Performance;
(d) Ritual;
(e) Popular memory;
(f) Skills and techniques;
(g) Indigenous knowledge systems; and
(h) The holistic approach to nature, society and social relationships;

(xxxiii) "Planning" means urban and regional planning, as contemplated in the Physical Planning Act, 1991 (Act No. 125 of 1991), and provincial town planning and land use planning legislation;

(xxxiv) "Planning authority" means an office of the State, including a province, a local authority or a regional authority, which is vested with a physical planning capacity;

(xxxvi) "Presentation" includes –

(a) The exhibition or display of;
(b) The provision of access or guidance to;
(c) The provision, publication or display of information in relation to; and
(d) Performances or oral presentations related to,
heritage resources protected in terms of this Act.

NATIONAL ESTATE

3 (1) For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.

(3) Without limiting the generality of subsections (1) and (2), a place or object is considered part of the national estate if it has cultural significance or other special value because of –

(a) Its importance in the community, or pattern of South Africa's history;
(b) Its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
(c) Its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
(d) Its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
(e) Its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
(f) Its importance in demonstrating a high degree of creative or technical achievement at a particular period;
(g) Its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
(h) Its strong or special association with the life work of a person, group or organization of importance in the history of South Africa; and
(i) Sites of significance relating to the history of slavery in South Africa.

GENERAL PRINCIPLES FOR HERITAGE RESOURCES MANAGEMENT

5 (1) All authorities, bodies and persons performing functions and exercising power in terms of this Act for the management of heritage resources must recognise the following principles:

(a) Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;
(b) Every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;
(c) Heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and
(d) Heritage resources management must guard against the use of heritage for sectarian purposes or political gain.

(2) Laws, procedures and administrative practices must –

(a) Be clear and generally available to those affected thereby;
(b) In addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and
(c) Give further content to the fundamental rights set out in the Constitution.

(4) Heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.

(5) Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.

(6) Policy, administrative practice and legislation must promote the integration of heritage resources conservation in urban and rural planning and social and economic development.

(7) The identification, assessment and management of the heritage resources of South Africa must –

(a) Take account of all relevant cultural values and indigenous knowledge systems;
(b) Take account of material or cultural heritage value and involve the least possible alteration or loss of it;
(c) Promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;
(d) Contribute to social and economic development;
(e) Safeguard the options of present and future generations; and
(f) Be fully researched, documented and recorded.

RIGHTS, DUTIES AND EXEMPTIONS OF STATE AND SUPPORTED BODIES

9 (1) All branches of the State and supported bodies must give heritage resources authorities such assistance in the performance of their functions as is reasonably practicable.

(2) All branches of State and supported bodies must, on the request of a heritage authority, make available for its use and incorporation into its data base any information which it has on record on heritage resources under its control: provided that the body supplying such information may set out conditions regarding the disclosure and distribution of such information by the heritage resources authority.

(3) Each State department and supported body must –

(d) On the request of the Minister and in accordance with regulations, prepare management plans for specified heritage resources;
(e) Not take any action that adversely affects such a resource unless the authority concerned is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken;
(f) At the initiation of the planning process of the project, or at least 90 days before taking any action that could adversely affect such heritage resource, whichever is the greater, inform SAHRA of the proposed action and give them a reasonable opportunity to consider and comment on it; and
(g) Where the destruction of such heritage resources is permitted in terms of this Act, record such resources in accordance with standards set by SAHRA and undertake any other mitigating actions which may be required by SAHRA.

(4) Where SAHRA has been informed of a proposed action by a State Department or supported body, it must, as soon as practicable, submit its comments to the Department or supported body.

(5) An action for the purpose of this section shall be deemed to include the making of a recommendation which, if adopted, would affect a heritage resource, the making of a decision, the approval of a programme, the issue of a licence or the granting of a permission;

(6) Compliance with subsection (3) does not exempt a State Department or supported body from complying with requirements in terms of this Act, regarding any heritage resource in its ownership which is protected in terms of this Act or equivalent provincial legislation.

ESTABLISHMENT OF SOUTH AFRICAN HERITAGE RESOURCES AGENCY

11 There is hereby established an organisation to be known as the South African Heritage Resources Agency (SAHRA) which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council established in terms of section 14.

ESTABLISHMENT OF PROVINCIAL HERITAGE RESOURCES AUTHORITIES

23 An MEC may establish a provincial heritage resources authority which shall be responsible for the management of the relevant heritage resources within the province, which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council constituted as prescribed by regulations published in the Provincial Gazette: Provided that the members of the Council shall be appointed in a manner which applies the principles of transparency and representivity and takes into account special competence, experience and interest in the field of heritage resources.

HERITAGE RESOURCES MANAGEMENT

38 (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as –

(e) Any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

(3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): provided that the following must be included:

(a) The identification and mapping of all heritage resources in the area affected;
(b) An assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
(c) An assessment of the impact of the development on such heritage resources;
(d) An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
(e) The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
(f) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
(g) Plans for mitigation of any adverse effects during and after the completion of the proposed development.

OFFENCES AND PENALTIES

51 (5) Any person who –

(a) Fails to provide any information that is required to be given, whether or not on the request of a heritage resources authority, in terms of this Act;
(b) For the purpose of obtaining, whether for himself or herself or for any other person, any permit, consent or authority in terms of this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;
(g) Within the terms of this Act, commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon him or her by its terms, or who councils, procures, solicits or employs any other person to do so,

shall be guilty of an offence and upon conviction shall be liable to such maximum penalties, in the form of a fine or imprisonment or both such fine and imprisonment, as shall be specified in the regulations under subsection (3).

LIMITATION OF LIABILITY

55 No person is liable in respect of anything done in terms of this Act in good faith and without negligence.

The United Nations Education, Scientific and Cultural Organization (UNESCO) World Heritage Sites are places of importance to cultural or natural heritage as described in the UNESCO World Heritage Convention, established in 1972. South Africa accepted the convention on 10 July 1997, making its heritage sites eligible for inclusion on the list. As of 2021, there are 10 World Heritage Sites in South Africa, including cultural-, natural- and mixed heritage sites. (en.wikipedia.org/wiki/List_of_World_Heritage_Sites_in_South_Africa)

- **WORLD HERITAGE CONVENTION ACT, NO. 49 OF 1999**

PREAMBLE

Recognising that the cultural heritage and the natural heritage are among the priceless and irreplaceable possessions, not only of the Republic, but of humankind as a whole;

Acknowledging that the loss, through deterioration, disappearance or damage through inappropriate development of any of these most prized possessions, constitutes an impoverishment of the heritage of all the peoples of the world and, in particular, the people of South Africa.

DEFINITIONS

1 In this Act, unless inconsistent with the context -

(iii) "Convention," as well as "World Heritage Convention," means the Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of United Nations Education, Scientific and Cultural Organization (UNESCO) on 16 November 1972 and ratified by the Republic on 10 July 1997, a copy of which is set out in the schedule;

(iv) "Cultural heritage" has the meaning given to it in Article 1 of the Convention;

(v) "Department" means the Department of Environmental Affairs and Tourism;

(vii) "Environment" has the meaning given to it in Section 1 of the National Environmental Management Act, 1998[1];

(x) "Historically disadvantaged persons" means persons or categories of persons that were unfairly discriminated against on the basis of past legislation, policies, prejudice and stereotypes;

(xiii) "Minister" means the Minister of Environmental Affairs and Tourism;

(xix) "Sustainable development" has the meaning given to it in Section 4(2) of this Act;

(xxiii) "World heritage list" means the World Heritage List established in terms of Article 11(2) of the Convention;

(xxiv) "World heritage site" means any place in the Republic which –

(a) Has been included on –

i. The World Heritage List; or

ii. The tentative list of the Republic referred to in Article 121(a)(i) of the Operational Guidelines

and is proclaimed by the Minister by notice in the Gazette to be a World Heritage Site; or

(b) Has been proclaimed by the Minister by notice in the Gazette to be a special heritage site for management in accordance with this Act as if that site qualified under paragraph (a) –

i. After consultation with the Minister affected by such a proclamation;

ii. If applicable, after consultation with the relevant MEC; and

iii. Subject to a resolution in parliament;

but such a special heritage site cannot be referred to as a World Heritage Site.

OBJECTIVES OF THE ACT

3 The objectives of this Act are to –

(a) Provide for –

(i) The cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites; and

(ii) Giving effect to the values of the Convention;

(e) Ensure the identification and transmission to future generations of the cultural and natural heritage of the Republic;

(f) Ensure that active and effective measures are taken for the protection, conservation and presentation of the cultural and natural heritage of the republic;

(h) Encourage job creation in connection with World Heritage Sites;

(i) Promote the development of culturally, environmentally and, if applicable, economically sustainable projects in connection with World Heritage Sites; and

(j) Promote empowerment and advancement of historically disadvantaged persons in projects related to World Heritage Sites.

FUNDAMENTAL PRINCIPLES

4 (1) For purposes of this Act, the fundamental principles listed in the following paragraphs are recognised by the State and apply throughout the Republic to the actions of all organs of State and Authorities in relation

[1] "Environment" means the surroundings within which humans exist and that are made up of –

(i) The land, water and atmosphere of the earth;

(ii) Micro-organisms, plant and animal life;

(iii) Any part or combination of (i) or (ii) and the interrelationship among and between them; and

(iv) The physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influences human health and well-being.

[National Environmental Management Act, No 107 of 1998 (NEMA 1998)].

to World Heritage Sites, subject to applicable law, including, without limitation, the National Environmental Management Act, 1998, and the National Heritage Resources Act, 1999 [Act No. 25 (*cor.*) of 1999], but in the event of any conflict between the principles of this Act and the said Acts, the provisions of the said Acts prevail:

(a) Cultural and natural heritage management must be sensitive to the people and their needs and must equitably serve their physical, psychological, developmental, cultural and societal interests;

(b) Development must be socially, culturally, environmentally and economically sustainable;

(h) Community well-being and empowerment must be promoted through cultural and natural heritage education, the raising of cultural and natural heritage awareness, the sharing of knowledge and experience and other appropriate means;

(i) The social, economic, cultural and natural heritage consequences of activities, including disadvantages and benefits, must be considered;

(j) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with applicable law;

(o) The cultural and natural heritage is held in public trust for the people, the beneficial use of cultural and environmental resources must serve the public interest and the cultural and natural heritage must be protected as the common heritage of the people.

(2) For the purposes of this Act, sustainable development of World Heritage Sites –

(g) A risk-averse and cautious approach is applied, which takes into accounts the limits of current knowledge about the consequences of decisions and actions;

(h) Negative impacts on the environment and on the environmental rights of the people must be anticipated and prevented, and where they cannot be prevented, must be mitigated;

(i) Cultural and natural heritage may promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and

(j) Cultural and natural heritage management must guard against the use of this heritage for purposes of threatening a culture based on equality and freedom or for party-political gain.

EXISTING ORGAN OF STATE DECLARED AS AUTHORITY

8 Where an existing organ of State is already lawfully managing or involved in a World Heritage Site, the Minister may, after consultation with the relevant affected MEC or Minister, if applicable, by notice in the Gazette –

(a) Declare that such organ of State is an Authority under this Act which is a juristic person with the capacity to sue and be sued in its own name;

(b) Give or impose such additional powers or duties referred to in Section 13 to that organ of State in relation to that World Heritage Site.

ESTABLISHMENT OF NEW AUTHORITIES

9 The Minister may, by notice in the Gazette, establish an Authority which is a juristic person with the capacity to sue and be sued in its own name, with so much of the powers and duties set out in this Act, as the Minister may determine.

ORGANS OF NEW AUTHORITIES

10 An Authority established in terms of Section 9 may exercise its powers and duties through a Board or an Executive Staff Component or both, as the Minister may determine by notice in the Gazette.

NAME OF AUTHORITY

11 The Minister may, by notice in the Gazette, determine a name for an Authority.

POWERS AND DUTIES OF AUTHORITIES

13 (f) Negotiate land claims over –

(i) State land with claimants, in consultation with the Department of Land Affairs, in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), and settle any such claims, with the approval of the Minister for Agriculture and Land Affairs of his or her delegate; or

(ii) Private land forming part of or affecting World Heritage Sites or land affecting World Heritage Sites, with the owner, and settle any such claims;

(g) Acquire lands or rights in land by contract, donation or otherwise;

(h) Use for gain or reward any movable and immovable asset under its control, subject to all applicable law, where such asset is not required by the Authority for the fulfilment of its functions, but such movable and immovable property, as listed in the nomination file for the World Heritage Site, may not be alienated, leased or encumbered without the prior written approval of the Minister;

(r) Enter into contracts in an open and transparent manner regarding cultural development or nature conservation with a competent national, provincial or local government or private nature conservation entity, with the necessary administrative capacity and resources.

PURCHASE OF LAND FOR WORLD HERITAGE SITE PURPOSES

29 The Minister may, with the concurrence of the Minister of Public Works, purchase any property and reserve it for purposes contemplated in this Act in relation to World Heritage Sites, if that purpose is in the public interest.

EXPROPRIATION OF LAND FOR WORLD HERITAGE SITE PURPOSES

30 The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriations.

UNESCO SCHEDULE:
CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

ARTICLE 1

For the purpose of this Convention, the following shall be considered as "Cultural heritage": Monuments, architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science, groups of buildings, groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science, sites, works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

ARTICLE 2

For the purposes of this Convention, the following shall be considered as "Natural heritage" : Natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view, geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation, natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

4) Considering Heritage with Reference to the Bill

- **Heritage Impact Assessment (HIA)**

The South African Heritage Resources Agency's (SAHRA) Heritage Impact Assessment (HIA) process is the subject of the National Heritage Resources Act, No. 25 of 1999 (NHRA 1999), Section 38 – Heritage Resources Management. Particulars of HIA are further described in the SAHRA (2007) Minimum Standards document, tailored for Archaeological- (AIA) and Palaeontological Impact Assessments (PIA) as the primary type HIAs conducted in the country. SAHRA (2007) so designates the provenance of HIAs as:

- Within the environmental arena, as part of an Environmental Impact Assessment (EIA) or Environmental Management Plan (EMP); or
- As a stand-alone HIA, called for in terms of the NHRA 1999, Section 38.

According to SAHRA (2007): - "*The legislation* [NHRA 1999] *requires that all heritage resources, that is, all places or objects of aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance are protected. Thus any assessment should make provision for the protection of ALL these heritage components, including archaeology, shipwrecks, battlefields, graves, and structures over 60 years, living heritage and the collection of oral histories, historical settlements, landscapes, geological sites, palaeontological sites and objects.*"

HIAs are to be conducted by professional, accredited heritage specialists (NHRA 1999; SAHRA 2007), with SAHRA practice standards making provision for studies done by non-accredited specialists, but subject to prior approval by SAHRA.

SAHRA (2007) further prescribes the basic four-tiered HIA process as: -

- *Desktop (or Scoping) study*: A basic database and literature study (to serve as background information to the assessment);
- *Phase 1*: The site assessment, the primary aim of which is to identify, record and describe all heritage resources that will be impacted by a proposed development, and make recommendations as to their destruction, conservation, mitigation or management.
- *Phase 2*: Deals with the mitigation of identified resources, either prior to or during the course of the development.
- *Phase 3*: Deals with the management of non-mitigatable or conserved resources, either during the course of development or post-development impact.
- [The SAHRA HIA process makes provision for a specialist *Recommendation for Exemption* from a HIA, provided the likelihood of no impact on resources be so demonstrated or described.]

Implicit in the SAHRA HIA process is tiered reporting, notwithstanding interim reporting per tier (including report evaluation), with a focus on the identification of resources, a description of probable impact thereon, the consideration of alternatives primarily for purposes of conservation and the provision of mitigatory measures and recommended management procedures where resources will be impacted (NHRA 1999; SAHRA 2007).

The HIA aims to provide heritage specific information on a proposed development to SAHRA, mandatory responsible for the implementation of the NHRA 1999, and as Competent Authority with reference to Section 38 – Heritage Resources Management, for purposes of responsible decision making in the consideration of such development applications.

Notwithstanding the definitions of (viii) "Development," (xxxiii) "Planning" and (xxxiv) "Planning Authority," as per the NHRA 1999, Section 2, tailored for HIA within the provenance of the environmental arena, it is argued that the Bill do constitute a 'Planned Development' subject to the NHRA 1999, Section 38, HIA process for purposes of heritage resources management. Notwithstanding the NHRA 1999, Sections 38(1)(a) – 38(1)(d), similarly tailored for HIA within the environmental arena, and Section 38(1)(e) providing for SAHRA or a Provincial Heritage Resources Authority (PHRA) to request a HIA for any other category of development so stipulated in Regulations. It is here argued that the 'Planned development', the Bill, will:

- Impact (have effect) on a surface area, the extent of which will be the geographical extent of South Africa [with reference to the NHRA 1999, Section 38(1)(a) – 38(1)(d)]; and

- Where reasonably inferred / known impact on heritage resources, as defined and protected by the NHRA 1999 will occur, with inferred resource impact preliminary summarized as - "*The legislation* [NHRA 1999] *requires that all heritage resources, that is, all* ***places*** *or* ***objects*** *of* ***aesthetic, architectural, historical, scientific, social, spiritual, linguistic*** *or* ***technological*** *value or significance are protected. Thus any assessment should make provision for the protection of* ***ALL*** *these heritage components, including* ***archaeology****, shipwrecks,* ***battlefields, graves,*** *and* ***structures over 60 years, living heritage*** *and the collection of* ***oral histories, historical settlements, landscapes, geological sites, palaeontological sites*** *and* ***objects***" (SAHRA 2007); thus notwithstanding the NHRA 1999, Section 38(1)(e) necessity for a category of development provided for in Regulations by SAHRA or a PHRA, but in accordance with resources directly protected by the NHRA 1999, as a standard stand-alone HIA, called for in terms of the NHRA 1999, Section 38, in order to ensure protection of the national estate (NHRA 1999, Section 3) in accordance with the general principles for heritage resources management, as per the NHRA 1999, Section 5, in general, and with specific reference to the NHRA 1999, Section 5(7) which states:
  - The identification, assessment and management of the heritage resources of South Africa must—
    (a) Take account of all relevant cultural values and indigenous knowledge systems;
    (b) Take account of material or cultural heritage value and involve the least possible alteration or loss of it;
    (c) Promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;
    (d) Contribute to social and economic development;
    (e) Safeguard the options of present and future generations; and
    (f) Be fully researched, documented and recorded.

Further to the above the NHRA 1999, Section 9, deals specifically with the rights and duties of the State and supporting bodies regarding heritage, and including, among others, Section 9(3)(f) - "*Each state department and supported body must - At the initiation of the planning process of the project, or at least 90 days before taking any action that could adversely affect such heritage resource, whichever is the greater, inform SAHRA of the proposed action and give them a reasonable opportunity to consider and comment on it*"; Section 9(4) - "*Where SAHRA has been informed of a proposed action by a State Department or supported body, it must, as soon as practicable, submit its comments to the Department or supported body*"; and Section 9(5) - "*An action for the purpose of this section shall be deemed to include the making of a recommendation which, if adopted, would affect a heritage resource, the making of a decision, the approval of a programme, the issue of a licence or the granting of a permission.*"

Basic Recommendations:

- It is recommended that DSAC makes available information, in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g), regarding signature to the SEIA (DPWI 2019) and approval thereof as per Table 1;
- It is recommended that SAHRA makes available the DPWI notification of the 'Planned Development' (the Bill), and SAHRA response thereto, and / or other information that may so apply, with reference to the NHRA 1999, Sections 9(3)(f), 9(4) and 9(5).
- It is recommended that SAHRA requests a Heritage Impact Assessment (HIA) to be conducted by DPWI, as implementing agent / sponsoring Department, in terms of the NHRA 1999, Section 38, for the Bill. It is further recommended that the HIA: -
  - Include at minimum a comprehensive Desktop study; and
  - The Phase 1 component of the HIA be focussed on, though not limited to, the NHRA 1999, Section 38(3):
    (d) An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
    (e) The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.

NOTE 1: SAHRA retains the right to diverge the HIA to PHRA level, be it to provincial or smaller geographic units, such as district- or local municipal level, or any other defined cultural or heritage units for HIA management purposes.

- **Socio-cultural Impact Assessment (SCIA) and the Concept of Cultural Change**

'*Culture*' is a complex concept with many an applicable definition of the term. For purposes of this report a basic definition from the field of Applied (or Developmental) Anthropology, - the study of the growth, change and development of cultures, is used. Applied Anthropology claims culture as the product of people; never static, always changing, - through the continuous adaptation to changing environments by the very people so involved. In itself culture cannot grow, change or develop, because 'culture' is not an existential entity in itself, - it is the product of people; henceforth explaining why 'culture' cannot be separated from 'people'. Mankind, or people, organise themselves into integrated and interdependent social units, -relationships and -interrelationships (often termed, and forming part of '*intangible heritage*'). The social constructs so created in turn allowing people to actively partake in their culture, thereby ensuring and directing the growth, change and development of their culture. In order '*to make sense*' of culture, - to study the growth, change and development thereof, 16 basic universal aspects of culture are used as primary variables in cultural assessment, namely the: Juridical system; Judicial system; Military system; Political system; Economic system, Technological system; Health system, Religious system; Educational system; Procreation system; Value system, Philosophical system, Social system; Language system; Recreation system; And the art system. The basic cultural systems, or universal aspects of culture are so linked, combined and subdivided, but always integrated, giving rise to the unique cultures of people. The interlinkages between the cultural systems, or dynamics underlying the interlinkages, bears reference to the balance (including measures of success, shortcomings and failure) of the culture within the changing environment in which it exists, and determines to exist in. It is implicit in the before said that culture is in essence dynamic, - ever changing, in an ever-changing environment (Els 1992).

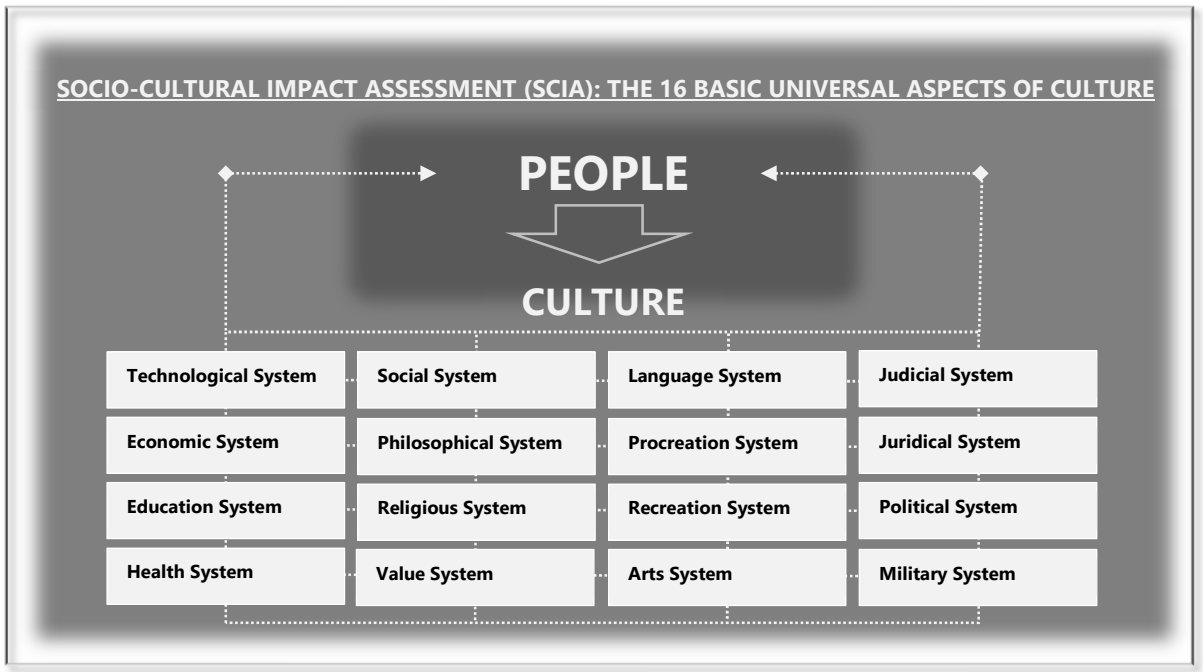

Figure 1: Socio-cultural Impact Assessment (SCIA); The 16 basic universal aspects of culture

It is necessary to briefly consider '*change*'; we have culture, a non-existential product of people, - ever changing in an ever-changing environment; - the changing environment consequenting change in the culture, affecting the balance of, or relationship between the systems or aspects the culture is composed of, and where '*culture*' can refer to a mono- or multiple (composite) culture (Els 1992):

Firstly, the changing environment can be natural or anthropogenically (man-made) induced;

Secondly, cultural change can be internal (*i.e.* through innovation by members of the culture) or, as is generally the case, external, through contact with other cultures. Cultural contact so referred to (external and internal process in mono- or composite cultures) results in cultural change; - the term '*acculturation*' refers to the overarching process of cultural change;

Thirdly, acculturation; - in its simplest form we have a donor, or dominant culture and a recipient culture. Cultural exchange usually occurs according to the standard process of acculturation, where the dominant culture is the

'donor' culture, with cultural transfer or change being directed from the dominant- to the recipient culture, - and less often according to the process of enculturation, where the minor- or recipient culture is the 'donor' culture, and the process of cultural transfer or change is reversed, with change directed from the traditional recipient- to the dominant culture. But cultural change is never a one-way street; any whichever culture is at once both 'donor' and 'receiver', the qualitative and quantitative value of exchange being the measure. The process of acculturation (including enculturation) is premised on the donor culture, being the culture whose culture or cultural system, - the whole or in part, is to be transferred to the recipient culture, often through a simple tree-tiered process of: 1) Selection; 2) Determination; and 3) Implementation, resulting in simplified or complex (*i.e.* amalgamation, integration, incorporation, multiplication, diffusion or separation) restructuring of the recipient culture, or aspect of the recipient culture. The process of acculturation can be either spontaneous or forced; where spontaneous acculturation refers to self-selection by a culture of the cultural aspects to be incorporated therein, - and forced acculturation to an imposed, directed or guided program of cultural change, and where the program referred to may be either formal / official or informal / unofficial. Various factors, both positive and negative, can influence any whichever process of acculturation, - every acculturation process is unique, with the success, character and complexity of the process directly dependant on the variables, including absolute and relative cultural values involved.

Culture is '*human nature,*' and is acquired through a learning process. Through culture people adapt to their environments in non-genetic ways, - so people living in different environments, natural and anthropogenic environments that is, will have different cultures, or will develop different cultures (Van Willigen 1986). The essence of acculturation, or cultural change, lies in the restructuring of the parts so that a new cultural pattern emerges. Bourguignon (1979) highlights the fact that this restructuring should centre on the question of – '*What changes were / are necessary to make culture as we know it / want to know it possible?*' and emphasizing the importance of continuous evaluation of the growth, change and development of the cultural or acculturation program or process in question.

Acculturation programs or the very processes of cultural change vary greatly; a very simple acculturation program can be sporadically, and successfully implemented in less than a generation (estimated at 25 – 30 years), though the wholesome incorporation of even simplified programs of change is estimated at 2 – 3 generations, and those of complex programs of change is estimated at 5 – 6 generations (Els 1992).

* * *

In South Africa Socio-cultural Impact Assessment (SCIA), the aim of which is to assess the impact of development on culture, and including monitoring and reporting on the growth, change and development thereof, is legally, primarily vested in the NHRA 1999, Section 38, HIA process, and specifically so in the NHRA 1999, Section 38(3)(d) – 38(3)(e):

3 The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(*a*): Provided that the following must be included:

(d) An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;

(e) The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.

From a heritage, and specifically a Socio-cultural Impact Assessment (SCIA) point of view, it is argued that the proposed development, the Bill and associated SEIA (DPWI 2019), represents, as it stands, a partially transparent formal / official forced acculturation process:

Where '*partially transparent*' refers to nondisclosure of the Bill's SEIA (DPWI 2019), - only recently, and very late in the process, partly remedied through the Sakeliga's SEIA PAIA 2000 request, the still pending Monitoring and Evaluation- and Implementation Plans, and the Medium Term Expenditure Framework (MTEF), the unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, and the absence of a Heritage Impact Assessment (HIA);

'*Formal / official*' refers to the planned acculturation program or -development being proposed legislation, - the Bill (including the Constitutional Amendments), intended for implementation.

'*Forced*' is to be understood within the framework of partial transparency, and the recognised Government intention to change behaviour, but through assessment scale and type (SEIA) not proportionate to the scale of intended impact nor the suitability of assessment type (HIA / SCIA) provided for by law (NHRA 1999), - and hence with '*unintended consequences*' on heritage / culture an expected outcome of the proposal; consequences which will be non-mitigatable and non-manageable, since being non-identified and thus not provided for within the current framework of the Bill and

SEIA (DPWI 2019), and which inevitably will result in 'forced' (and reasonably argued non-transparent but 'intended') consequences. The force applied by Government can be described as diplomatic, - comprising consultation and associated legislative changes and amendments, as opposed to aggressive force. However, the history of opposition to the proposed rule, - the withdrawal in 2008 of a 2007 draft Policy (B16-2008), the 2018 rejection by Parliament of a 2013 revised Draft Bill (B4D-2015), and with opposition ongoing, spells of forced opposition, - with the force so used by opposition to the Bill similarly described as diplomatic in nature.

The process of cultural change proposed comprises a standard process of '*acculturation*', where cultural exchange is intended to occur from the dominant or 'donor' culture to the 'recipient' culture: Within a composite (South African) cultural context the 'donor' culture is denoted by Government, democratically so elected by the majority of the people, with the 'recipient' culture represented by the primary target audience, private property owners, to bring the desired program of cultural exchange, a uniform expropriation framework to facilitate the acquisition of privately owned property, for purposes of public interest, in a cost effective manner about (DPWI 2019). Not only do the SEIA (DPWI 2019) exclude cultural assessment of the target or recipient culture, private property owners (primary recipient culture), but also of the '*beneficiary*' culture (secondary recipient culture); - in neither case do the assessment (SEIA) aim to, or holistically consider impact on the 16 basic universal aspects of culture, associated social units underlying the -aspects, or linkages and interlinkages connecting these, and extended to temporal frameworks associated with cultural exchange programs, and with transfer (or re-invention) of the integrated cultural complex between the primary and secondary recipient cultures inferred, but not assessed. The SEIA (DPWI 2019) is thus, with direct reference to holistic cultural consideration, described as contrary to the risk averse principle of impact assessment and will reasonably speaking result in '*unintended consequences*', with the unintended consequences preliminary described as imbalance to the integrated cultural complex, - where imbalance can refer to disturbance, maladaptation / -integration, fracturing, splitting, disintegration and the like, of both affected recipient (primary and secondary) cultures.

It is furthermore necessary to make brief mention of the broader context or '*environment*' within which SCIA is vested, and where 'environment' is defined as the natural environment, the cultural environment and the socio-economic relationship between the two, - albeit designating a commonality between SEIA and SCIA inquiry, method of inquiry vary because the aim of the assessment, socio-economic vs. socio-cultural, differs. From a SCIA point of view, considering the scale and potential impact of the proposed development, the Bill (and Constitutional Amendments), any assumption of a static or near static cultural- or natural environment denotes potential risk, with the projected dynamism of the environments central in determining socio-economic impact, or change in the socio-economic relationship between these environments.

Without a full critique of the Bill's SEIA (DPWI 2019), which is not the premise of this report, it is important to briefly highlight some key identifiable differences between the SEIA and HIA / SCIA for purposes of assessment, reporting and inclusion in responsible decision making, thereby calling attention to the necessary complimentary nature of SEIA and SCIA for purposes of Social Impact Assessment (SIA), specifically for large developments, such as the Bill (and Constitutional Amendments), with a potential high impact on heritage:

1) The SEIAS Guidelines (DPME 2015) states that - "*The guidelines should make it possible to conduct at least an initial, mostly qualitative assessment of a proposed law or regulation,*" whilst coevally addressing the issue of proportionality - "*The effort expended on the final assessment should however be proportional to the likely impact of the rule. It does not make sense to bring in expensive consultants or spend months on assessments of routine updates of regulations, for instance,*" while "*a more in-depth analysis and broader consultation with stakeholders should be undertaken for proposals where the initial assessment suggests there will be substantial implementation costs, compliance costs, outcomes, risks or political sensitivity*." The basic argument associated herewith is twofold in nature:
    - Firstly, based on the opposition history to the Bill, - the withdrawal in 2008 of a 2007 draft Policy (B16-2008), the 2018 rejection by Parliament of a 2013 revised Draft Bill (B4D-2015) and including ongoing opposition to the Bill, it can reasonably be concluded that the drafters have underestimated the impact of the intended behavioural change on the recipient (primary, and not excluding secondary) cultures, and that the SEIA (DPWI 2019) in the case of proposed development, - the Bill, does not meet the proportionality principle of SEIAS.
    - Secondly it is necessary to question why DPWI, upon encountering initial opposition to the Bill, did not exploit the provision in SEIAS for more in-depth analysis with specific reference to planned behavioural change with a substantial or high impact on heritage, the very premise of SCIA, provided for by law (NHRA 1999).

    It here need be stated that the implementation of SEIAS in no way replaced any legislation, - that said with specific reference to the NHRA 1999, Sections 9 and 38: The complimentary nature of SEIA and SCIA does not exonerate DPWI from compliance with provisions of the NHRA 1999 at any stage throughout the process.

2) The principle of '*inter-disciplinary research*' is inscribed in SEIAS, albeit limited to '*inter-national priority assessment*'. Government's national priorities are listed as: 1) Social cohesion and security; 2) Economic inclusion; 3) Economic growth; and 4) Environmental sustainability. Whereupon the SEIAS Guidelines (DPME 2015) states - "*Policy makers should assess the likely impact of policy, regulation or law on all these priorities in order to ensure not only that the implementation process is efficient but also that it is effective from the standpoint of national aims. They must also take into consideration that policies, legislation and regulations may have an impact on concurrent functions. A common risk is that policy / law makers focus on achieving one priority without assessing the impact on other national aims at all. In particular, measures around infrastructure, the social services and the environment often have unforeseen implications for economic growth and inclusion. In addition, measures to support economic inclusion may impose excessive costs on growth, and vice versa. A more complex challenge arises when meeting national priorities leads to contradictory outcomes. For instance, economic growth on the current path is environmentally unsustainable, since it is highly emissions intensive. New rules must manage the transition to a greener economy in ways that minimise the costs to economic growth, employment and the poor. Similarly, regulations to protect workers and communities from exploitative practices may deter some investments. A balance has to be struck between protecting the vulnerable and supporting a growing economy that will ultimately provide them with more opportunities.*"

   SEIAS (DPME 2015) so describes, in part, the premise of SCIA; - the study of the growth, change and development of cultures, through a holistic approach. Government's national priorities, and '*inter-national priority assessment*' principle so becomes ancillary priorities to a proposed change, or rule, - the proposed acculturation program to be assessed, and are thus inherent in the methodology of SCIA, the purpose of which incudes the identification of risks through holistic assessment, - mentioned here with direct reference to '*unintended consequences*' as an anticipated risk or outcome, as stipulated in the SEIA (DPWI 2019), but with the risks identified in SCIA the focus point of proposed alternatives, mitigatory measures, management proposals and the like. Again raising the question of proportionality and suitability of SEIA as single assessment type with reference to the scale of, and potential high impact on heritage of the proposed change or rule, - the Bill (and Constitutional Amendments), whilst a suitable specialist study type (HIA / SCIA) is provided for by law (NHRA 1999).

3) The still pending Monitoring and Evaluation Plan, DPWI 2019, Part 2.10.e), Implementation Plan, DPWI 2019, Part 2.10.f), said with recognition to the DPWI 2019, Part 2.10.d) (see also Table 4), and the Medium Term Expenditure Framework (MTEF), DPWI 2019, Part 2.7.a), are not only inadequate but moreover unacceptable with reference to the scale of, and potential high impact on heritage / culture, coined with the advanced stage of the proposal. The absence of these Plans for purposes of consideration in public participation and decision making is here classed as '*Fatal Flaws*' in the legislative process. Non-availability of the Plans for public review and consideration coined with transparency concerns related to the SEIA, - obtained only through the Sakeliga PAIA 2000 request (Sakeliga 2021a), and the recent unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, that made it into the public arena, are deserving of further investigation.

4) According to the SEIAS Guidelines (DPME 2015), SEIAS aims to provide an efficient way to change behaviour, without engaging in costly sanctions, incentives, or detailed reporting systems, with compliance cost to stakeholders calculated according to: i) The regulatory burden; and ii) The cost of behavioural change itself, - and with any whichever planned behavioural change always desired to proceed as effortlessly as possible, especially when compared with the anticipated benefits. SEIAS so aims to justify the cost of transformation and whether implementation costs have been minimised as far as possible: "*In sum, given complex government priorities in a divided society, SEIAS must generate an assessment of the impacts of a proposed rule that goes beyond a simple cost-benefit analysis. It must help decision makers to understand and balance the socio-economic impact of proposals on different constituencies.*"

   Sakeliga challenged the purported SEIAS aim of the draft Bill's SEIA: According to Sakeliga (2021a) the SEIA - "*Does not really account for the cost of the proposal.*" The SEIA - "*Does not model the impact of expropriation policies on for instance GDP trend growth, unemployment, investment, and poverty.*" It furthermore - "*Claims banks will benefit from an increase in their mortgage books due to expropriation and state policy,*" whilst it - "*Removes solatium, streamlines the expropriation process for government at the expense of property owners, and… allows government to confiscate property without compensation.*" Notwithstanding that the SEIA - "*Dismisses investor concerns by claiming such concerns are 'weakly supported.'*" According to Sakeliga (2021b): "*Various groups and citizens, while consulting with government on the Expropriation Bill, pointed to the potential of economic catastrophe, should the Bill, alongside the*

constitutional amendment to allow confiscation without compensation, be adopted. None of these concerns were recorded in the SEIA and in the event that the SEIA did note concerns, it dismisses them out of hand without honest engagement or reasonable independent analysis". The draft Bill - "*Intends to seize property from some, supposedly, to give to others, or to control in state custodianship. In doing so, selected recipients may indeed gain property, but all may suffer from the detrimental and impoverishing effect a general assault on property rights will bring about.*" Sakeliga (2021b) concluded - "*The impression government apparently hopes to create with the SEIA,… is that the Bill is widely supported. Government hopes to use this non-existent 'support' to reassure concerned investors, foreign governments, and sceptical citizens.*"

Sakeliga (2021a) rightfully states that the SEIA - "*Concerns itself with direct cost to the state – for instance, defending against litigation – and not economic consequences.*" Part 2.7 of the SEIA (DPWI 2019) deals primarily with costs, stating that budgets have been included in the relevant Medium Term Expenditure Framework (MTEF). Cost analysis of the Bill (assumed including alternatives, mitigation and management) is centred on cost to the State; - including, amongst others, the management of an expropriation register, transfer-, notice- and conveyancing costs, property investigations and the payment of compensation (see Tables 2 and 3).

It is necessary to consider cost in a broader context, - the Bill not being the first initiative by Government at meeting its national priorities with reference to both affected recipient (primary and secondary) cultures; the private property owners and the '*beneficiaries*'. According to the Vumelana Advisory Fund, who links communal land beneficiaries to potential investors, up to 90% of farms that have been redistributed for land reform purposes are no longer productive. Many projects are dysfunctional whilst others have closed: "*Sometimes the level of infighting within the community and the problems are insurmountable such as that there's no right-minded investor who can come on board.*" In other cases problems are ascribed to bureaucratic 'red-tape,' – delays in title-deeds, in turn affecting possible investment, skills development, running costs, management and the like (Buthelezi 2021). By 2018 / 2019 Government had settled 80,664 land claims benefitting 2.1 million beneficiaries at a cost of R40 billion, inclusive of financial compensation to beneficiaries, whilst having had restored 3.5 million hectares of land for agricultural and economic development purposes. The Department of Rural Development and Land Reform (DRDLR) reported: "*The department is also resolving systematic challenges which form barriers to the progress of beneficiaries. To support black farmers, preferential allocation of water rights, infrastructure provision and access to markets will be applied. In the 2018 / 2019 financial year, Government intends to settle 1,151 land claims at a cost of R2 billion; and prioritize post-settlement support on restituted farms, to the value of R700 million*" (www.gov.za/issues/land-reform). Earlier in 2021 the Vumelana Advisory Fund welcomed the finalising by Government of 1,409 restitution claims at a cost of R3.9 billion over the next three years, as well as the accompanying R896.7 million for post-settlement support (Timeslive 2021). On 23 June 2021, Trevor Manuel, former Minister of Finance, pointed out that the land reform target of the National Development Plan (NDP) had been 2/3 achieved (Merten 2021).

It is evident from the above that concerns relating directly to land, with reference to the Bill (and Constitutional Amendments), go beyond the issue of cost alone, - raising the question of HIA and specifically SCIA in the matter, as provided for by law (NHRA 1999), and with direct reference to the very field of Applied Anthropology, - the study of the growth, change and development of cultures. The basic purpose of the Bill, and supporting SEIA (DPWI 2019), - "*To seize property from some, supposedly, to give to others, or to control in state custodianship*" (Sakeliga 2021b), in order to meet Government's national priorities, with the cost of the 'seizing' of land being carried by the primary recipient culture, or private property owners, considering primarily administrative- and supporting costs to '*beneficiaries*' (secondary recipient culture) being carried by Government, juxtaposed against the high failure rate, up to 90% of farms redistributed to date (Buthelezi 2021), spells of deeper rooted concerns in the approach taken by Government, - concerns purported by Government to be remedied through the Bill, by a type of continuing experimental '*more of the same, but more rigorous*' approach, in itself subject to scrutiny: One question so raised is that of transparency; - is the Bill (and Constitutional Amendments) to be read in its supposed benevolent aim and ambition only, or are we to read a more clandestine purpose thereto, - one of a non-transparent subjugation and subversion program of behavioural change, aimed foremost at the primary recipient culture, private property owners, but not excluding the secondary '*beneficiary*' -culture?

5) The '*Rule of Law*' principle is strongly emphasised in the SEIA (DPWI 2019), and so acclaimed up to the highest political level in the country: At the Goldman Sachs conference in Westcliff, Johannesburg, 2019, the President Cyril

Ramaphosa, speaking on land expropriation, assured investors and business people that South Africa was governed by the '*Rule of Law,*' and that land restoration and -expropriation would be peaceful, stating that: "*Investors should not be worried about this, they should not even have a headache about it*" (Lindeque 2019). On commentary by the US Secretary of State, Mike Pompeo, at the United Nations (UN) Economic Commission for Africa in Addis Ababa, Ethiopia, 2020, the President Ramaphosa responded that Government was drafting a new Bill to clarify the circumstances under which land may be expropriated without compensation, - and adding that the process would be guided by the Constitution and the '*Rule of Law*' (Madisa 2020). The SEIA (DPWI 2019) not only reaffirms the '*Rule of Law*' principle, it in addition argues that the Bill will decrease incoherent and burdensome legislative regimes, whilst obviating the possibility of irrational expropriation through requisite consultation with affected parties and listing specifically the Land Court Bill, 2021 (LCB 2021), and the Intergovernmental Relations Framework Act, No. 13 of 2005 (IRFA 2005), as suitable avenues for dispute resolution. The SEIA (DPWI 2019) claims - "*The entire Expropriation Bill, 2019, will be tested in the courts for its constitutional soundness once it is passed into law,*" and that - "*There are sufficient checks and balances in both Government policy and different legislations* [in place] *to keep the issue in check*." But legislative concerns relating to the Bill (and Constitutional Amendments) remain varied and complex. For purposes of this report, and with specific reference to heritage, the following concerns are noted:

- Part 2.9 of the SEIA (DPWI 2019) deals with risk management and potential disputes resulting from the proposed development, - the Bill, with Part 2.9.c)(a) addressing probable disputes, or competing / conflicting service delivery interests that may arise, between Government Departments and -agencies. Compliance to date, not excluding approval of the SEIA by DPME and DPWI, but specifically signature of the Minister Mthethwa, DSAC, to the SEIA, with direct reference to the NHRA 1999, Sections 9 and 38, and with the NHRA 1999 being the mandatory responsibility of SAHRA, an agency of DSAC, so listed in the SEIA, being the issue at hand, and a purpose of this report, - and raising the question, if sound '*Rule of Law*' have not been followed during the drafting and law-making process, with what confidence can it be trusted during the implementation phase of the Bill?
- On 24 August 2020 ArchaeoMaps opened SAHRIS CaseID 15421 (2020) - Heritage Crime: Zindzi Mandela – Sterkfontein Tweet, 13 June 2019, Sterkfontein & the COHWHS, a UNESCO World Heritage Site, on SAHRA's SAHRIS system, with a requested response date of 26 February 2021, allowing for a six-month response period. No response was received and on 1 March 2021 ArchaeoMaps forwarded a reminder letter to SAHRA, with a 10 working day postponement date for response, being 15 March 2021, - again no response was received from SAHRA. Whereupon ArchaeoMaps, on 26 March 2021, brought the SAHRIS CaseID 15421 matter to the attention of the Minister Mthethwa, DSAC, requesting the Minister to instruct SAHRA in terms of the Promotion of Administrative Justice Act, No. 3 of 2000 (PAJA 2000) to address SAHRIS CaseID 15421, - the SAHRIS case in question being a matter of public concern, and directly related to 1/10 of South Africa's UNESCO World Heritage Sites. On 01 July 2021, with no response received from either DSAC or SAHRA, ArchaeoMaps forwarded communication to the effect of assistance in terms of PAJA 2000, Section 4, to DSAC in order to bring SAHRIS CaseID 15421 to conclusion. Albeit thus still pending, SAHRIS CaseID 15421 will serve to also test / verify the '*Rule of Law*' principle with direct reference to heritage, pertaining specifically to PAJA 2000, the NHRA 1999 and the WHCA 1999. [On 27 March 2021 ArchaeoMaps communicated SAHRIS CaseID 15421 to the UNESCO World Heritage Centre.]

Whilst the '*Rule of Law*' principle is much emphasised in the SEIA (DPWI 2019) and so appraised in the public and political arenas, the concern raised here is not the presence of policies, regulations and legislation, but the implementation thereof, and compliance thereto.

To close discussion on the '*Rule of Law*' principle, and with direct reference to the SEIA (DPWI 2019) claim that - "*The entire Expropriation Bill, 2019, will be tested in the courts for its constitutional soundness once it is passed into law*" and the recommended HIA: From a HIA, and specifically a SCIA point of view, it is at present uncertain whether the '*Rule of Law*' principle is, notwithstanding the recently adopted LCB 2021: i) Proposed in the SEIA as legal administrative measure to facilitate implementation of the Bill (and Constitutional Amendments); ii) As a direct, albeit (partially) 'identified,' but '*unintended consequence*' impact on the juridical / judicial aspects of culture; or iii) As alternative, mitigation or management measure on pertinently unidentified / '*unintended consequence*' impacts of the proposed development, - the Bill (and Constitutional Amendments), on heritage / culture. Uncertainty of the application and purpose of the '*Rule of Law*' principle so used in the SEIA (DPWI 2019) for the proposed development, - the Bill (and Constitutional Amendments), is indicative of an experimental, rather than a well assessed and researched approach or program.

6) SEIAS (DPME 2015) provides for the SEIA to be conducted by the implementing agent / sponsoring Department, either in-house, or in conjunction with external specialists. Departments may so contract out elements of the analysis, though stated that complete assessments by consultants are not preferable, for reasons stipulated in the SEIAS Guidelines (DPME 2015) and additionally argued in terms of cost. It here need be reiterated that implementation of SEIAS did not replace any legislation, - with specific reference to the NHRA 1999. NHRA 1999, Section 38, HIAs are to be conducted by professional, accredited heritage specialists (NHRA 1999; SAHRA 2007), with SAHRA practice standards making provision for studies done by non-accredited specialists, but subject to prior approval by SAHRA.
   - Firstly, with reference to the cost implication of HIA / SCIA: At present DSAC, including SAHRA and the PHRAs house the bulk of Government employed heritage specialists; within the existing SAHRA system a combination of accredited- (consultants) and '*in-house*' heritage specialists are thus possible for assessment purposes as a compromise between the SAHRA and SEIAS systems, with conclusion of the HIA to be finalised by SAHRA (this compromise proposal would however be subject to prior approval by SAHRA), - and where a combination of accredited- (consultants) and '*in-house*' heritage specialists may also serve a '*checks and balances*' function with reference to assessor bias.
   - Secondly, political bias is a concern innate in impact assessment in general, and so alluded to by Sakeliga (2021a) with reference to the Bill's SEIA: "*It rather reads like a political justification for expropriation policy and does not really account for the cost of the proposal.*" Political bias is, at least in part, addressed in heritage legislation applicable to this case: According to the NHRA 1999, Section 5(1)(d): "*Heritage resources management must guard against the use of heritage for sectarian purposes or political gain*," whilst the WHCA 1999, Section 4(2)(j) states that: "*Cultural and natural heritage management must guard against the use of this heritage for purposes of threatening a culture based on equality and freedom or for party-political gain.*" Within the greater Environmental Impact Assessment (EIA) arena '*Specialist Declarations of Interest*' have become a standard practice in recent years. It is here proposed that tailored '*Specialist Declarations of Interest*' directly addressing concerns related to political and party-political gain of assessors be considered as suitable measure to avoid political bias in HIA combined accredited- (consultants) and '*in-house*' heritage specialist assessments. It is furthermore advised that a like measure be considered by SEIAS to avoid, and provide a platform for investigation, in the event of political or party-political bias concerns being raised, - not limited to SEIA assessors, but extended at minimum to Government Department officials signing off on a SEIA.

7) In predicting how a development will affect Government's national priorities, SEIAS (DPME 2015) is argued as to provide a reasoned and effective measure to strike an appropriate and sustainable balance between national imperatives. According to SEIAS, policy initiatives, regulations and legislation will have a varying impact on different social groups; - with the social groups so identified summarized as: i) The richest 10% vs. the poorest 40% of households; ii) Metros and major urban areas vs. the poorest regions (former homelands); iii) Employers vs. employees; iv) Women, men, youth and older people; and v) Existing industries vs. new industries. It is surmised that some costs will inevitably be imposed on some social groups in meeting Government's national priorities, with the burdens and restrictions so imposed primarily affecting those who benefitted from previous laws and regulations, including formal enterprises and relatively well-off communities; small sacrifices on their part, argues SEIAS (DPME 2015), can lead to significant improvements in the condition of the majority: "*After all, these priorities have been adopted because the economic and social systems inherited from apartheid reproduce unsustainable inequalities and exclusion.*" SEIAS so assists in determining when the State's action justify the cost of transformation and whether implementation costs have been minimised as far as possible. In predicting the costs, SEIAS list technical analysis, published studies, simulations, modelling and participatory research with stakeholders as suitable methods to be used in assessments.

   It is here argued that the SEIA (DPWI 2019) does not meet basic data-based requirements for 'assessment' purposes, and resultantly questioning 'evaluation' of the 'assessment' for approval, in accordance with the SEAIS Guidelines (DPME 2015), with the argument structured according to:
   - The purpose of the development, - the Bill, or the research question / hypothesis;
   - Methodology, data collection and -presentation, and assessment; and
   - Conclusion: Assessment and evaluation.

- The purpose of the development, - the Bill, or the research question / hypothesis:

The purpose of the development, - the Bill (and Constitutional Amendments), is to date poorly defined: Sakeliga's (2021b) statement bears reference - "*Through the Bill, government intends to seize property from some, supposedly, to give to others, or to control in state custodianship.*" The very purpose of the development, the research question or hypothesis, remains, at this very late stage, with the law-making process continuing unabated, poorly defined; directly casting doubt as to how purported data contained in the SEIA (DPWI 2019), notwithstanding departmental and stakeholder approval thereof, can in essence support the proposal's purpose, - the research question, or hypothesis, and in so doing highlighting three characteristics of the proposal: i) Sub-standard assessment or science; ii) Transparency concerns; and iii) The experimental nature of the proposal.

Whilst the purpose of the development, - the Bill (and Constitutional Amendments), can loosely be defined as the equitable redistribution, including restitution of land (primary point of query), the departure point to assess the feasibility thereof, a socio-economic assessment (primary query to point), - the SEIA, remains questionable: Both the methodology and data collected and presented in the SEIA (DPWI 2019) for purposes of assessment are queried, requisiting in turn questioning of the evaluation of the assessment, and approval thereof.

The use of the Democratic-Apartheid model in the SEIA (DPWI 2019), as per the SEIAS Guidelines (DMPE 2015), is problematic; a HIA / SCIA have been requested, - a purpose of this report, and will only briefly be touched on here with reference to the purpose of the development, or the research question / hypothesis. Considering only HIA / SCIA temporal frameworks in relation to the Democratic-Apartheid model, not defined in the SEIA, but so referenced in SEIAS: "*After all, these priorities have been adopted because the economic and social systems inherited from apartheid reproduce unsustainable inequalities and exclusion,*" and notwithstanding reiteration that the current proposed development is not the first initiative by Government to meet its purpose, comprising a near two and a half decade ongoing democratic process, the use of the Democratic-Apartheid model is argued as inconclusive for purposes of problem solving considering South Africa's complex past: Pondering only the Historical / Colonial Period (notwithstanding complex Pre-colonial concerns), vast population movements, associated with the occupation of land, and not excluding the displacement of peoples, are for example associated with British Colonialism, having had resulted in a predominantly South to North migration, whilst the Later Iron Age (LIA) diaspora had a distinctly North to South-East impact. The omission, or distortion, of such migratory impacts in the current land debate are of sincere concern. Yet the limited Democratic-Apartheid model, from a heritage / cultural point of view '*Fatally Flawed,*' is promoted persistently in the decision- and law making-process: According to Merten (2021) - "*That democratic Expropriation Bill, to finally replace the apartheid-era act, is well advanced in the legislative pipeline at parliament – and it doesn't need a special majority in the House, as does a constitutional amendment, particularly one that amends the Bill of Rights. Because beneath the stalling of the constitutional amendment of Section 25 lie the numbers – the ANC needs the EFF's* [Economic Freedom Fighters] *44 seats in addition to its own 230 in the House to make the minimum two-thirds support threshold. If this rises to the 75% many constitutional observers argue is needed because the Bill of Rights is to be amended, more votes are needed. That's how the numbers have always stacked up in South Africa's supercharged politicking. And those numbers have been used by the EFF as a springboard to push state custodianship of land, or effective nationalisation in line with its policy of state land ownership.*" Merten's (2021) media report so directly echoes Sakeliga's (2021a) concern raised regarding the Bill's SEIA: "*It rather reads like a political justification for expropriation policy.*"

It is undeniable that the proposed development, - the Bill (and Constitutional Amendments), with its emphasis on land redistribution, not excluding restitution, forms a legal continuum with the Restitution of Land Rights Act, No. 22 of 1994 (RLRA 1994), and Amendments. But raising the question, with the roots of the RLRA 1994 firmly vested in heritage / culture, how did heritage / culture so readily disappear from the decision- and law-making scene; - through non-compliance and sub-standard- or mismanagement? It is necessary to return to the purpose of the development, - the Bill: How does current parliamentary debates bear reference to the originally identified concern, the equitable redistribution and restitution of land? And how, and to which degree, do the findings of the SEIA (DPWI 2019) support the ongoing parliamentary debates, the law-making process?

[**NOTE:** The deadline for Parliament to report back to the House on the Bill is 30 August 2021 (Merten 2021)].

- Methodology, data collection and -presentation, and assessment:

The SEIA (DPWI 2019) is problematic on a basic data-based assessment level: Nowhere in the SEIA is the methodology used defined or described. It can however reasonably be deduced that assessment is vested in a first phase three-tiered variable method of: i) Social categories; ii) The Democratic-Apartheid model; and the iii) 'Outcomes of the Bill.'

i) Social categories –

The SEAIS Guidelines (DPME 2015) list five social categories for purposes of assessment, summarized as: i) The richest 10% vs. the poorest 40% of households; ii) Metros and major urban areas vs. the poorest regions (former homelands); iii) Employers vs. employees; iv) Women, men, youth and older people; and v) Existing industries vs. new industries. But the social categories so listed in SEIAS are not used in the SEIA (DPWI 2019). The concern here is not so much deviation from the social categories listed in SEIAS; it is fair to infer that in certain cases the proposal, and resultantly then the associated assessment, may require deviation, but no reasons are provided in the SEIA for deviation from SEIAS, - the deviation is not motivated. Instead the SEIA relies on two created social categories, labelled here 'Social Category 1' and 'Social Category 2.'

The SEIA (DPWI 2019) argues the Bill as aiming to facilitate access to land on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation ('Social Category 1'), with the potential to reduce unemployment, poverty, homelessness, criminality and morbidity, whilst promoting entrepreneurship, food security and productivity of the nation in general ('Outcomes of the Bill'). 'Social Category 1' remains so listed in the SEIA, but aside from the above statement with reference to the 'Outcomes of the Bill' is no further defined or described (quantitatively or qualitatively) for assessment purposes, - that said with direct reference to the Democratic-Apartheid model and the 'Outcomes of the Bill'.

The SEIA (DPWI 2019) thereafter primarily concerns itself with 'Social Category 2,' comprising two sub-groups, namely the private property owners (primary recipient culture), and the '*beneficiaries*' (secondary recipient culture). Neither of the 'Social Category 2' sub-groups are adequately defined or described (quantitatively or qualitatively) with reference to the Democratic-Apartheid model or the 'Outcomes of the Bill'.

The SEIA (DPWI 2019) does not explain the reasons for the two social categories used, 'Social Category 1' and 'Social Category 2'. And neither is any description given as to how the two social categories relate to one another, - how they are associated or linked. The reader is left to infer that 'Social Category 1', - persons who will benefit from the proposal on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation, equates to the 'Social Category 2' '*beneficiary*' sub-group, the sub-group inferred to represent those who have been disadvantaged by the Apartheid regime. However any such assumption would be flawed, implying that Apartheid was a regime that discriminated based on gender, sex, age, disability, religious belief and political affiliation, and any person who feels so discriminated against, should, within the development proposal be classed as a 'Social Category 2' '*beneficiary*', whilst all 'Social Category 2' sub-group private property owners should, by virtue of extending the argument, represent persons who benefitted from the Apartheid regime; thus excluding any persons discriminated against based on gender, sex, age, disability, religious belief and political affiliation, - or alternatively stated persons who benefitted from discrimination based on gender, sex, age, disability, religious belief and political affiliation. These 'Social Category 2' private property owner representatives then further inferred identifiable, based on their current involvement in primarily formal enterprise or being part of a relatively well-off community, and henceforth to be held accountable for the property 'seizing' cost of the proposal?

ii) The Democratic-Apartheid model:

The fact that the Democratic-Apartheid model is not deemed conclusive for use considering the complex past of South Africa have already been alluded to, and will not be further discussed in this section. Suffice to say that the recommended HIA / SCIA would, reasonably speaking, serve to furnish important information to further understanding.

The Democratic-Apartheid model is not defined or described in the SEIA (DPWI 2019). The SEIA Guidelines (DPME 2015) makes reference to the former Apartheid regime: "*After all, these priorities have been adopted because the economic and social systems inherited from apartheid reproduce unsustainable inequalities and exclusion,*" and with cognisance to the current proposal not being the first initiative by Government to meet its purpose, - the Democratic

process representing a near two and a half decade ongoing land redistribution and -restitution program. Based on the before said it is reasonable to infer that the Democratic-Apartheid model would constitute a basic successive descriptive approach for comparative purposes, comprising at minimum of: i) Apartheid vs. ii) Democracy to date vs. the iii) 'Outcomes of the Bill'. But nowhere in the SEIA is such a categorical description forthcoming.

In lack of suitable data presented on the social categories used in the SEIA ('Social Category 1' and 'Social Category 2'), no attempt has been made, - and would in fact be impossible, to define or describe (qualitatively or quantitatively) the social categories in relation to the Democratic-Apartheid model categories of: i) Apartheid vs. ii) Democracy to date vs. the iii) 'Outcomes of the Bill'.

Considering the Democratic-Apartheid model any use of a direct Democratic vs. Apartheid juxtaposing for assessment and evaluation purposes should be flagged as a '*Potential Risk*'.

iii) 'Outcomes of the Bill':

The 'Outcomes of the Bill,' or the purpose of the development, constitutes the primary variable to be evaluated in the first phase of the assessment, - the three-tiered variable method of: i) Social categories; ii) The Democratic-Apartheid model; and the iii) 'Outcomes of the Bill.' The purported 'Outcomes of the Bill' is listed in the SEIA (DPWI 2019) as to: i) Reduce unemployment; ii) Reduce Poverty; iii) Reduce homelessness; iv) Reduce criminality; v) Reduce morbidity; vi) Promote entrepreneurship; vii) Promote food security; and viii) Promote productivity of the nation in general. But again, aside from the listing of the 'Outcomes of the Bill,' – with all '*outcomes*' so described being 'benefits' of the development, these 'Outcomes of the Bill' are nowhere defined or described: The absence of a description of the social categories ('Social Category 1' and 'Social Category 2') against the Democratic-Apartheid model effectively making a comparative data-based description (quantitative or qualitative) of the beneficial 'Outcomes of the Bill' impossible.

On a second phase assessment level, a comparative description (quantitative or qualitative) of the 'Outcomes of the Bill,' the benefits vs. the identified risks, or disadvantages would be necessary: The benefits of the 'Outcomes of the Bill', as stated above, are so listed in the SEIA (DPWI 2019) as to: i) Reduce unemployment; ii) Reduce Poverty; iii) Reduce homelessness; iv) Reduce criminality; v) Reduce morbidity; vi) Promote entrepreneurship; vii) Promote food security; and viii) Promote productivity of the nation in general. Identified risks or disadvantages are briefly, albeit insufficiently for assessment purposes, listed and described in the SEIA, Part 2.3.b) as: i) Government officials may abuse the powers in the legislation; ii) Expropriation without compensation clause is unconstitutional; and iii) The Bill will deter investors. Additional benefits and concerns (potential risks and disadvantages) are recorded in the SEIA, Part 2.3 – Consultations, but with these remaining as such in the SEIA, merely as recorded opinions by those consulted, without any attempt of inclusion or description for assessment purposes. Sakeliga's (2021b) comment on the SEIA bears reference: *"Various groups and citizens, while consulting with government on the Expropriation Bill, pointed to the potential of economic catastrophe, should the Bill, alongside the constitutional amendment to allow confiscation without compensation, be adopted. None of these concerns were recorded in the SEIA and in the event that the SEIA did note concerns, it dismisses them out of hand without honest engagement or reasonable independent analysis."* No useful data on the purpose of the development, - the Bill, or a direct description of the benefits vs. potential risks or disadvantages of the 'Outcomes of the Bill' are so contained in the assessment, - the SEIA.

On a third phase assessment level, as per SEIAS (DPME 2015), it would be necessary to define and describe (quantitively or qualitatively) the 'Outcomes of the Bill', both benefits and potential risks or disadvantages, against Government's national priorities of: i) Social cohesion and security; ii) Economic inclusion; iii) Economic growth; and iv) Environmental sustainability, and in doing so with cognisance to the '*inter-national priority*' principle inscribed in SEIAS and with reference to Government's long-term interest in the majority of the population and the country as a whole. However, with first and second phase assessment data largely lacking, no third phase assessment is contained in the SEIA:

The SEIA (DPWI 2019), Part 9, contains the following 'evaluation' on the national priorities most supported in the proposal –

- PRIORITY 1: Economic transformation and job creation (X);
- PRIORITY 4: Spatial integration, human settlements and local government (X); and
- PRIORITY 5: Social cohesion and safe communities (X).

But with the national priorities so identified as most supported in the SEIA, wholly unsupported by data contained in the SEIA.

Last but not least, the proportionality principle in SEIAS (DPME 2015) have already been addressed with reference to the Bill's SEIA (DPWI 2019). According to SEIAS (DPME 2015) - "*The guidelines should make it possible to conduct at least an initial, mostly qualitative assessment of a proposed law or regulation,*" and further thereto - "*The effort expended on the final assessment should however be proportional to the likely impact of the rule. It does not make sense to bring in expensive consultants or spend months on assessments of routine updates of regulations, for instance,*" while "*a more in-depth analysis and broader consultation with stakeholders should be undertaken for proposals where the initial assessment suggests there will be substantial implementation costs, compliance costs, outcomes, risks or political sensitivity.*" SEIAS additionally list technical analysis, published studies, simulations, modelling and participatory research with stakeholders as suitable methods to be used in assessments. Focussing on economic concerns Sakeliga (2021a) stated: "*The document* [SEIA] *also does not model the impact of expropriation policies on for instance GDP trend growth, unemployment, investment, and poverty. Instead, it only concerns itself with direct cost to the state – for instance, defending against litigation – and not economic consequences.*" Further to mainly economic research concerns so expressed by Sakeliga (2021a), it is noticeable that the Bill's SEIA (DPWI 2019) contains no references or citations whatsoever: No academic journal papers, specialist or general media reports or case studies are referenced in the SEIA, not even results from previous stakeholder and public consultations related to the history of the Bill.

- Conclusion: Assessment and evaluation:

The SEIA (DPWI 2019) is problematic on a basic data-based assessment level: The methodology used for assessment is not defined or described in the SEIA, but is deduced as comprising of three phases to meet basic assessment-, and including SEIAS (DPME 2015) requirements:

First phase assessment: Based on a three-tiered variable method of: i) Social categories; ii) The Democratic-Apartheid model; and the iii) 'Outcomes of the Bill';

Second phase assessment: Based on a comparative description of benefits vs. identified risks and disadvantages of the 'Outcomes of the Bill'; and

Third phase assessment: Description of the 'Outcomes of the Bill' (benefits vs. identified risks and disadvantages) against Government's national priorities of: i) Social cohesion and security; ii) Economic inclusion; iii) Economic growth; and iv) Environmental sustainability.

At no phase during the course of the 'assessment' (first-, second- or third phase) is suitable data for assessment purposes presented, resultantly the SEIA does not, and cannot by implication, meet the basic requirements for a data-based 'assessment', not from a quantitative or qualitative description or data presentation point of view; notwithstanding that the SEIA does not meet the proportionality principle of SEIAS (DPME 2015) with reference to the scale of impact, nor standard of research expected from a proposal of scale, with reference to the absence of referenced or cited research resources, - a grim reminded of Sakeliga's (2021a) comment on the SEIA: "*There is nothing of substance to disagree with, as the document amounts to nothing more than an extended opinion article. We might disagree with the expressed opinion, but there are no real facts, data, or analysis to consider.*" Following the lack of facts, data and analysis contained in the SEIA, - crucial ingredients for purposes of 'assessment', it is necessary to ask how 'evaluation' of the 'assessment' is possible? Exactly what 'evaluation' did supporting Departments and stakeholders, as per the SEIA (DPWI 2019), approve of?

8) The SEIA's (DPWI 2019) sample questions raised for purposes of an outcomes-based evaluation as per Part 2.10.e) as well as the listed areas of identification for further research as per Part 2.10.g) need to be considered against the experimental character of the SEIA already alluded to, as opposed to the premise of SCIA, requisiting answers, or continued evaluation and monitoring of many a sample question so raised in the SEIA, whilst areas of further research can reasonably be expected, and need to be identified, beyond the limitations of those proposed in Part 2.10.g), and addressed within the framework of the proposal, - the Bill (and Constitutional Amendments): Not doing so effectively spells of the provisioning of '*unintended consequences,*' consequences which will be non-mitigatable and non-manageable because they were not provided for, - alternatively stated, because the '*unintended consequences*' are purposefully left for post-impact identification, -evaluation and -investigation / research, their consideration as non-transparent but 'intended,' or clandestinely motivated consequences warrants further investigation.

ITEM	DPWI – The Expropriation Bill, 2019 Socio-economic Impact Assessment (SEIA)	GENERAL Socio-cultural Impact Assessment (SCIA)
Conducted by -	DPWI	Independent Heritage Specialists (See proposal for combination of accredited consultants and '*in-house*' Government heritage specialists)
Primary Point of Query -	Equitable redistribution of land (including land restitution	People (Consultation)
Primary Query to Point -	Socio-economic assessment Social system (?) / Economic system (?): Neither system is defined, with general risks / benefits vaguely described, but unsupported by data; No to limited consideration of alternatives, mitigation-(cost to government only?) or management measures	16 Aspects of culture / cultural systems
Primary Objective -	Assessment of the Socio-economic impact of the development, the Expropriation Bill, 2019 (and Constitutional Amendments), according to Government's national priorities of: 1. Social cohesion and security 2. Economic inclusion 3. Economic growth 4. Environmental sustainability	Assessment of the impact of development on the balance of the 16 cultural systems (to ensure mitigation / management of systems, linkages and interlinkages to be directly or indirectly affected)
Methodology -	NOT STATED / DEFINED (SEIA) NOTE: SEIAS six-tiered impact assessment process (DPME 2015)	Four-tiered basic HIA process: 1. Desktop study: Literature background 2. Phase 1: Site assessment 3. Phase 2: Mitigation 4. Phase 3: Management (Providing for tiered, and interim per tier reporting and evaluation)
Primary Assessment Measures -	Research (NOTE: No references or citations - No academic journal papers, specialist or general media reports, case studies, or previous stakeholder or public participation results?)	Research (including direct consultation)
Temporal Focus -	1+ Generation(s)	1+ Generation(s)
Environmental Sustainability -	NOT ASSESSED	Of prime importance, based on the SCIA premise of '*Environment*' as the natural environment, the cultural environment and the socio-economic relationship between the two
Public Education -	Public education: Undefined in SEIA (Uncertainty as to whether proposed as alternative, mitigation or management measure, or to be conducted prior to / included? in SEIA, during or post-implementation of the development) Target audience: Private property owners	Public education (heritage) commences with Phase 1, and continues throughout the process through the availability of reports for comment to registered I&APs, and serves to inform decision makers (Primarily prior to implementation, with continued education during and post implementation as per recommendations of the HIA)

Table 5: Basic differences between the SEIA and the SCIA

- **Other**

1) It is herewith requested that SAHRA makes available for purposes of HIA, upon request, the Cultural Heritage / Conservation Management Plan (CMP) of DSAC as per the Regulations (2017) in terms of the NHRA 1999, Section 9, for cultural heritage resources, the maintenance and conservation of which is the responsibility of State Departments and supported bodies, and thus so applicable to DSAC. Should no such DSAC CMP exist, is it requested that SAHRA instructs the DSAC to commission the relevant CMP, - and for the CMP to be made available, timeously and upon request, for HIA purposes.

2) It is similarly requested that SAHRA makes available for purposes of HIA, upon request, the Cultural Heritage / Conservation Management Plan (CMP) of DPWI as per the Regulations (2017) in terms of the NHRA 1999, Section 9, for cultural heritage resources, the maintenance and conservation of which is the responsibility of State Departments and supported bodies, and thus so applicable to DPWI. Should no such DPWI CMP exist, is it requested that SAHRA instructs the DPWI to commission the relevant CMP, - and for the CMP to be made available, timeously and upon request, for HIA purposes.

5) Conclusion and Recommendations

- **Conclusion**

The Socio-economic Impact Assessment (SEIA) conducted by the Department of Public Works and Infrastructure (DPWI) for the Expropriation Bill, 2019 [the Bill], was not made available to the public, and obtained through a Promotion of Access to Information Act, No. 2 of 2000 (PAIA 2000), request by Sakeliga (2021a): "*Sakeliga condemns both the apparent withholding of the document from public consideration as well as glaring deficiencies regarding its content.*"

- Sakeliga (2021a) focussed initial attention, amongst others, on stakeholder concerns, stating that: "*The SEIA is supportive of confiscation of property without compensation and reveals various institutions' purported support for the proposal. In fact, the study claims there is unanimous support for the Bill among the entities it consulted.*" Sakeliga questioned both the accuracy of stakeholders' comments contained in the SEIA, with the aim of verifying these, as well as alleged preferential stakeholder consultation, asking why some stakeholders were consulted and others not. Stakeholder concerns raised, including anticipated economic decline, not excluding -catastrophe, and the probability of further '*unintended consequences*' were not included in the SEIA (DPWI 2019), with commentary included reflective of Government Departments and civil groups closely aligned with the African National Congress' (ANC), or ruling party's, ideological convictions (Sakeliga 2021a, 2021b); Sakeliga (2021a) concluded that the SEIA - "*Amounts to nothing more than an extended opinion article… there are no real facts, data, or analysis to consider,*" and further thereto that it - "*Reads like a political justification for expropriation policy and does not really account for the cost of the proposal.*" Whereupon Sakeliga (2021b) requested the DPWI to withdraw the SEIA with recommendations, including that a recommissioned, rigorous SEIA be conducted by independent specialists.
- As legal extension to the Bill the Constitution Eighteenth Amendment Bill, 2019, was published. Following publication of the 2019 Constitutional Amendment an unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, made it into the public arena (Morning Shot 2021).

Commentary by stakeholders so referred to by Sakeliga (2021a, 2021b) is outlined in the SEIA (DPWI 2019), Part 2.3 – Consultations. The said Part of the SEIA also containing commentary by Government Departments, and, most importantly for purposes of this report, the comment issued by the Minister Nathi Mthethwa, Department of Sport, Arts and Culture (DSAC) as follows:

a) Q – "*What do they see as the main benefits, Implementation / Compliance costs and risks?*"
   A (DSAC) – "*The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.*"
b) Q – "*Do they support or oppose the proposal?*"
   A (DSAC) – "*They support the proposal.*"
c) Q – "*What amendments do they propose?*"
   A (DSAC) – "*None.*"
d) Q – "*Have these amendments been incorporated in your proposal? If yes, under which Section?*"
   A (DSAC) – "*N/A.*"

Commentary by the Minister Mthethwa, DSAC, was so issued with direct reference to the (DPWI 2019):

- National Heritage Resources Act, No. 25 of 1999 (NHRA 1999); and the
- World Heritage Convention Act, No. 49 of 1999 (WHCA 1999).

(With the signed SEIA indicating no area of conflict with either the NHRA 1999 or the WHCA 1999.)

In summary, the SEIA (DPWI 2019) argues the Bill as aiming to facilitate access to land on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation, with the potential to reduce unemployment, poverty, homelessness, criminality and morbidity, whilst promoting entrepreneurship, food security and productivity of the nation in general. The aim of the Bill is so described as in accord with Government's core national priorities of: i) Social cohesion and security; ii) Economic inclusion; iii) Economic growth; and iv) Environmental sustainability. The Bill inevitably seeks to change behaviour to achieve its desired purpose; with the primary behaviour identified to be changed being that of private property owners, and the desired change the Bill intends to effect being a uniform expropriation framework for organs of State, including on national, provincial and local levels of government, to facilitate the acquisition of privately owned property in a cost effective manner, with compensation for expropriation in certain cases determined at nil, in order to enable the State to meet its socio-economic objectives. The SEIA furthermore claims the

Bill's stance on expropriation in affirmation of the '*Rule of Law*' principle; - that the Bill will decrease incoherent and burdensome legislative regimes, whilst obviating the possibility of irrational expropriation through requisite consultation with affected parties, and further thereto that sufficient checks and balances in both government policy and different legislations are in place to keep such issues in check. Cost analysis of the Bill is centred on cost to the State; - including, amongst others, the management of an expropriation register, transfer-, notice- and conveyancing costs, property investigations and including the payment of compensation. Part 2.9 of the SEIA deals with risk management of the Bill, and listing, amongst others, disputes between Government Departments and -agencies as a possible risk that may arise due to competing / conflicting interests.

It is here argued that the Bill's SEIA (DPWI 2019) is insufficient for purposes of Social Impact Assessment (SIA), and specifically so with reference to the NHRA 1999, Section 38 – Heritage Resources Management; both the development extent (study site) and reasonably inferred impact on protected heritage resources call for caution, with the proposed development, the Bill (including the Constitutional Amendments), described as a development with a potential high impact on heritage.

Basic Recommendations:

- It is recommended that DSAC makes available information, in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g), regarding signature to the SEIA (DPWI 2019) and approval thereof as per Table 1;
- It is recommended that SAHRA makes available the DPWI notification of the 'Planned Development' (the draft Bill), and the SAHRA response thereto, and / or other information that may so apply, with reference to the NHRA 1999, Sections 9(3)(f), 9(4), 9(5) and Section 38.
- It is recommended that SAHRA requests a Heritage Impact Assessment (HIA) to be conducted by DPWI, as implementing agent / sponsoring Department, in terms of the NHRA 1999, Section 38, for the draft Bill. It is further recommended that the HIA: -
    - Include at minimum a comprehensive Desktop study; and
    - The Phase 1 component of the HIA be focussed on, though not limited to, the NHRA 1999, Section 38(3):
        (d) An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
        (e) The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.

Further to the above: -
It is argued that proposed development, the Bill and associated SEIA (DPWI 2019), represents, as it stands, a partially transparent formal / official forced acculturation process:

Where '*partially transparent*' refers to nondisclosure of the Bill's SEIA (DPWI 2019), - only recently, and very late in the process, partly remedied through the Sakeliga's SEIA PAIA 2000 request, the still pending Monitoring and Evaluation- and Implementation Plans, and the Medium Term Expenditure Framework (MTEF), the unpublished (leaked) copy of the Constitution Eighteenth Amendment Bill, 2021, and the absence of a Heritage Impact Assessment (HIA);

'*Formal / official*' refers to the planned acculturation program or -development being proposed legislation, - the Bill (including the Constitutional Amendments), intended for implementation.

'*Forced*' is to be understood within the framework of partial transparency, and the recognised Government intention to change behaviour, but through assessment scale and type (SEIA) not proportionate to the scale of intended impact nor the suitability of assessment type (HIA / SCIA) provided for by law (NHRA 1999), - and hence with '*unintended consequences*' on heritage / culture an expected outcome of the proposal; consequences which will be non-mitigatable and non-manageable, since being non-identified and thus not provided for within the current framework of the Bill and SEIA (DPWI 2019), and which inevitably will result in 'forced' (and reasonably argued non-transparent but 'intended') consequences. The force applied by Government can be described as diplomatic, - comprising consultation and associated legislative changes and amendments, as opposed to aggressive force. However, the history of opposition to the proposed rule, - the withdrawal in 2008 of a 2007 draft Policy (B16-2008), the 2018 rejection by Parliament of a 2013 revised Draft Bill (B4D-2015), and with opposition ongoing, spells of forced opposition, - with the force so used by opposition to the Bill similarly described as diplomatic in nature.

The process of cultural change proposed comprises a standard process of '*acculturation,*' where cultural exchange is intended to occur from the dominant or 'donor' culture to the 'recipient' culture: Within a composite (South African) cultural context the 'donor' culture is denoted by Government, democratically so elected by the majority of the people, with the 'recipient' culture represented by the primary target audience, private property owners, to bring the

desired program of cultural exchange, a uniform expropriation framework to facilitate the acquisition of privately owned property, for purposes of public interest, in a cost effective manner about (DPWI 2019). Not only do the SEIA (DPWI 2019) exclude cultural assessment of the target or recipient culture, private property owners (primary recipient culture), but also of the '*beneficiary*' culture (secondary recipient culture); - in neither case do the assessment (SEIA) aim to, or holistically consider impact on the 16 basic universal aspects of culture, associated social units underlying the -aspects, or linkages and interlinkages connecting these, and extended to temporal frameworks associated with cultural exchange programs, and with transfer (or re-invention) of the integrated cultural complex between the primary and secondary recipient cultures inferred, but not assessed. The SEIA (DPWI 2019) is thus, with direct reference to holistic cultural consideration, described as contrary to the risk averse principle of impact assessment and will reasonably speaking result in '*unintended consequences*', with the unintended consequences preliminary described as imbalance to the integrated cultural complex, - where imbalance can refer to disturbance, maladaptation / -integration, fracturing, splitting, disintegration and the like, of both affected recipient (primary and secondary) cultures.

It is furthermore necessary to make brief mention of the broader context or '*environment*' within which SCIA is vested, and where 'environment' is defined as the natural environment, the cultural environment and the socio-economic relationship between the two, - albeit designating a commonality between SEIA and SCIA inquiry, method of inquiry vary because the aim of the assessment, socio-economic vs. socio-cultural, differs. From a SCIA point of view, considering the scale and potential impact of the proposed development, - the Bill (and Constitutional Amendments), any assumption of a static or near static cultural- or natural environment denotes potential risk, with the projected dynamism of the environments central in determining socio-economic impact, or change in the socio-economic relationship between these environments.

- **Recommendations**

- **It is recommended that DSAC makes available information, in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g), regarding signature to the SEIA (DPWI 2019) and approval thereof as per Table 1.**

It is recommended that the Minister Nathi Mthethwa, Department of Sport, Arts and Culture (DSAC) makes available information, in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g), regarding signature to the SEIA (DPWI 2019) and approval thereof as per Table 1. The presentation of information should include:

- A detailed explanation of DSAC commentary as contained in the SEIA (DPWI 2019), Part 2.3 – Consultations (see Table 1), and with direct reference to the NHRA 1999, not necessarily excluding the WHCA 1999 (as per Part 2.1 of the SEIA);
- Names, contact particulars and details of any organizations / parties / movements / individuals that have counselled the accused prior to or during consideration of the SEIA (DPWI 2019); and
- Names, contact particulars and details of any organizations / parties / movements / individuals that was counselled by the accused associated with the DSAC approval of, and comment to the SEIA (DPWI 2019).

- **It is recommended that SAHRA makes available the DPWI notification of the 'Planned Development' (the Bill), and the SAHRA response thereto, and / or other information that may so apply, with reference to the NHRA 1999, Sections 9(3)(f), 9(4), 9(5) and Section 38.**

It is recommended that SAHRA makes available the DPWI notification of the 'Planned Development' (the Bill), with DPWI as implementing agent / sponsoring Department, and the SAHRA response thereto, and / or other information that may so apply, with reference to the NHRA 1999, Sections 9(3)(f), 9(4), 9(5) and Section 38.

Should no such Notification of Intent to Develop (NID) have been received by SAHRA it is recommended that SAHRA requests the Minister Patricia de Lille, Department of Public Works and Infrastructure (DPWI), to make available information in terms of the NHRA 1999, Sections 51(5)(a), 51 (5)(b) and 51(5)(g) regarding the non-submission of a NID.

- **It is recommended that SAHRA requests a Heritage Impact Assessment (HIA) to be conducted by DPWI as implementing agent / sponsoring Department, in terms of the NHRA 1999, Section 38, for the Bill.**

1. It is recommended that the Minister de Lille, DPWI, withdraws, with immediate effect, the SEIA (DPWI 2019) for the Bill (and implying requisite temporary repealment of the Bill), based on:
   - Non-transparency of the SEIA for public commenting purposes, and the recent making available thereof through the PAIA 2000 Sakeliga (2021) request; and
   - The identified need for a Heritage Impact Assessment (HIA) with the Bill argued as a 'Planned development' subject to the NHRA 1999, Section 38, HIA process, with reference to both development extent (study site) and reasonably inferred impact on protected heritage resources, and with the Bill described as a development with a potential high impact on heritage.

2. It is recommended that SAHRA requests a HIA to be conducted by DPWI as implementing agent / sponsoring Department, and as compulsory heritage compliance requirement to the 'Planned Development', the Bill.
   - The requested HIA is argued as a stand-alone HIA, to be called for in terms of the National Heritage Resources Act, No. 25 of 1999 (HRA 1999), Section 38 – Heritage Resources Management.
   - With reference to the NHRA 1999, Section 38(1), it is argued that the Bill will:
     1) Impact (have effect) on a surface area, the extent of which will be the geographical extent of South Africa [with reference to the NHRA 1999, Section 38(1)(a) – 38(1)(d)]; and
     2) Where reasonably inferred / known impact on heritage resources, as defined and protected by the NHRA 1999 will occur, with inferred resource impact preliminary summarized as - "*The legislation* [NHRA 1999] *requires that all heritage resources, that is, all* ***places*** *or* ***objects*** *of* ***aesthetic, architectural, historical, scientific, social, spiritual, linguistic*** *or* ***technological*** *value or significance are protected. Thus any assessment should make provision for the protection of* ***ALL*** *these heritage components, including* ***archaeology****, shipwrecks,* ***battlefields, graves,*** *and* ***structures over 60 years, living heritage*** *and the collection of* ***oral histories, historical settlements, landscapes, geological sites, palaeontological sites*** *and* ***objects***" (SAHRA 2007); thus notwithstanding the NHRA 1999, Section 38(1)(e) necessity for a category of development provided for in Regulations by SAHRA or a PHRA, but in accordance with resources directly protected by the NHRA 1999, and in order to ensure protection of the national estate (NHRA 1999, Section 3) in accordance with the general principles for heritage resources management, as per the NHRA 1999, Section 5, in general, and with specific reference to the NHRA 1999, Section 5(7)(a) – 5(7)(f).
   - It is recommended that the HIA: -
     - Include at minimum a comprehensive Desktop study; and
     - The Phase 1 component of the HIA be focussed on, though not limited to, the NHRA 1999, Section 38(3):
       (d) An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
       (e) The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.
   - The purpose of the HIA is to inform: -
     1) The HIA provides heritage specific information on a proposed development to SAHRA, mandatory responsible for the implementation of the NHRA 1999, and as Competent Authority with reference to Section 38 – Heritage Resources Management, for purposes of responsible decision making; and
     2) The HIA should be made available to Interested & Affected Parties (I&AP) during the 45 day commenting period (re-submission of the Bill), and including during the full Public Participation Process (PPP) of the Bill, for purposes of public evaluation and comment.

   NOTE 1: SAHRA retains the right to diverge the HIA to PHRA level, be it to provincial or smaller geographic units, such as district- or local municipal level, or any other defined cultural or heritage units for HIA management purposes.

   NOTE 2: It is recommended that DPWI makes available to SAHRA the reasons why the SEIA (2019) was not published for public comment as per the SEIAS Guidelines (DPWI 2015), and for this information to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 3: It is recommended that DPWI makes available to SAHRA the Monitoring and Evaluation Plan for the draft Bill as per the SEIA (DPWI 2019), Part 2.10.e), and for the Monitoring and Evaluation Plan to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 4: It is recommended that DPWI makes available to SAHRA the Implementation Plan for the draft Bill as per the SEIA (DPWI 2019), Part 2.10.f), and for the Implementation Plan to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 5: It is recommended that DPWI / DSAC makes available to SAHRA particulars of the areas of linkages: Sections 46 and 30, with reference to the NHRA 1999 and the WHCA 1999 respectively, as per Part 2.1 of the SEIA (DPWI 2019), and for this information to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 6: It is recommended that DPWI makes available to SAHRA the Medium Term Expenditure Framework (MTEF) as per Part 2.7.a) of the SEIA (DPWI 2019), and for this information to be made available, upon request, for purposes of the HIA (and to ArchaeoMaps with direct reference to submission of this report).

NOTE 7: It is recommended that '*Specialist Declarations of Interest*' be considered by SEIAS to avoid, and provide a platform for investigation, in the event of political or party-political bias concerns being raised, - not limited to SEIA assessors, but extended at minimum to Government Department officials signing off on a SEIA.

NOTE 8: It is requested that SAHRA makes available for purposes of HIA, upon request, the Cultural Heritage / Conservation Management Plan (CMP) of DSAC as per the Regulations (2017) in terms of the NHRA 1999, Section 9, for cultural heritage resources, the maintenance and conservation of which is the responsibility of State Departments and supported bodies, and thus so applicable to DSAC. Should no such DSAC CMP exist, is it requested that SAHRA instructs the DSAC to commission the relevant CMP, - and for the CMP to be made available, timeously and upon request, for HIA purposes.

NOTE 9: It is similarly requested that SAHRA makes available for purposes of HIA, upon request, the Cultural Heritage / Conservation Management Plan (CMP) of DPWI as per the Regulations (2017) in terms of the NHRA 1999, Section 9, for cultural heritage resources, the maintenance and conservation of which is the responsibility of State Departments and supported bodies, and thus so applicable to DPWI. Should no such DPWI CMP exist, is it requested that SAHRA instructs the DPWI to commission the relevant CMP, - and for the CMP to be made available, timeously and upon request, for HIA purposes.

The deadline for Parliament to report back to the House on the Bill is 30 August 2021 (Merten 2021). It is requested that SAHRA address heritage concerns raised in this report with immediate effect, and prior to said date, 30 August 2021.

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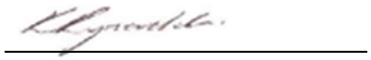
Prepared by –



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Appendix 1:
The Expropriation Bill, 2019.

DEPARTMENT OF PUBLIC WORKS

NO. 1409 **21 DECEMBER 2018**

DRAFT EXPROPRIATION BILL, 2019

INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT EXPROPRIATION BILL, 2019

I, Thulas Waltermade Nxesi, the Minister of Public Works, having obtained Cabinet approval, hereby publish the draft Expropriation Bill, 2019 for broader public comment.

Interested persons may submit written comments on the draft Expropriation Bill, 2019 not later than sixty days (60) days from the date of publication of this notice to:

The Director-General, Department of Public Works
Private Bag X65
PRETORIA 0001

Or hand deliver to:

Central Government Offices (CGO) Building
256 Madiba street
Pretoria
0002

Tel No: 012 406 2000/012 406 1315 /012 406 1567
Facsimile: 086-272-4554
E-mail: livhuwani.ndou@dpw.gov.za / johannes.lekala@dpw.gov.za
For Attention: Livhuwani Ndou / Johannes Lekala

REPUBLIC OF SOUTH AFRICA

EXPROPRIATION BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. … of … 2019)
(The English text is the official text of the Bill)

(MINISTER OF PUBLIC WORKS)

[B —2019]

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BILL

To provide for the expropriation of property for a public purpose or in the public interest and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 25 of the Constitution of the Republic of South Africa, 1996, provides as follows:

''Property

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable

balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

(a) the current use of the property;

(b) the history of the acquisition and use of the property;

(c) the market value of the property;

(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

(4) For the purposes of this section—

(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.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).''; and

WHEREAS section 33(1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair; and

WHEREAS section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and

WHEREAS uniformity across the nation is required in order to deal effectively with these matters;

AND IN ORDER TO ENABLE expropriation in accordance with the Constitution,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Sections

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DEFINITIONS AND APPLICATION OF ACT

1. Definitions

2. Application of Act

CHAPTER 2

POWERS OF MINISTER OF PUBLIC WORKS TO EXPROPRIATE

3. Powers of Minister to expropriate

4. Delegation or assignment of Minister's powers and duties

CHAPTER 3

INVESTIGATION AND VALUATION OF PROPERTY

5. Investigation and gathering of information for purposes of expropriation

6. Consultation with municipality during investigation

CHAPTER 4

INTENTION TO EXPROPRIATE AND EXPROPRIATION OF PROPERTY

7. Notice of intention to expropriate

8. Notice of expropriation

9. Vesting and possession of expropriated property

10. Verification of unregistered rights in expropriated property

11. Consequences of expropriation of unregistered rights and duties of expropriating authority

CHAPTER 5

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13. Interest on compensation

14. Compensation claims

15. Offers of compensation

16. Requests for particulars and offers

17. Payment of amount offered as compensation

18. Property subject to a mortgage or deed of sale

19. Payment of municipal property rates and other charges out of compensation money

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21. Mediation and determination by court

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22. Urgent expropriation

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23. Withdrawal of expropriation

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24. Service and publication of documents and language used therein

25. Extension of time

26. Expropriation register

27. Civil fines and offences

28. Regulations

29. Interpretation of other laws dealing with expropriation

30. Repeal of laws

31. Transitional arrangements and savings

32. Short title and commencement

SCHEDULE

CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—

''claimant'' means a person who has lodged a claim for compensation with an expropriating authority arising from or in connection with an expropriation of property;

''Constitution'' means the Constitution of the Republic of South Africa, 1996;

''court'' means—

(a) a High Court within whose area of jurisdiction a property is situated;

(b) a Magistrate's Court within whose area of jurisdiction a property is situated, having competent jurisdiction and designated as such in terms of paragraph *(b)*(ii) in the definition of 'court' in section 1, read with section 9A, of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); or

(c) in the case of intangible property, the court within whose area of jurisdiction the owner of that property is ordinarily resident or has its principal place of business within the Republic;

''date of expropriation'' means the date mentioned in the notice of expropriation, which date must not be earlier than the date of service of such notice;

''deliver'', in relation to any document, means to deliver by hand, facsimile transmission or post as contemplated in section 24(3) and (4);

''Department'' means the Department of Public Works;

''Director-General'' means the Director-General of the Department;

''disputing party'' means an owner, holder of a right, expropriated owner or expropriated holder who does not accept the amount of compensation offered in terms of section 14(1) or 15(1);

''expropriation'' means the compulsory acquisition of property by an expropriating authority or an organ of state upon request to an expropriating authority, and ''expropriate'' has a corresponding meaning;

''expropriated holder'' means a holder of an unregistered right in property, which right has been expropriated by notice in terms of section 8(1) or in terms of section 9(1)*(b)*;

''expropriating authority'' means an organ of state or a person empowered by this Act or any other legislation to acquire property through expropriation;

''holder of a right'' means the holder of an unregistered right in property;

''land parcel'' means land that has been surveyed and is either registered or yet to be registered in a deeds registry;

''Master'' means the Master of the High Court;

''Minister'' means the Minister responsible for Public Works;

''notice of expropriation'' means a notice contemplated in section 8;

''organ of state'' means an organ of state as defined in section 239 of the Constitution;

''owner'', in relation to property or a registered right in property, means the person in whose name such property or right is registered, and—

(a) if the owner of any property or registered right in land is deceased, means the executor of his or her estate and if no executor has been appointed or his or her appointment has lapsed, the Master;

(b) if the estate of the owner of any property or registered right in land has been sequestrated, means the provisional or final trustee of his or her insolvent estate, as the case may be, or if no such appointment has been made, the Master;

(c) if the owner of any land or registered right in property is a company that is being wound up, means the provisional or final liquidator of that company or if no such appointment has been made, the Master;

(d) if any property or registered right in property is vested in a liquidator or trustee in terms of any other law, means that liquidator or trustee;

(e) if the owner of any property or registered right in property is otherwise under a legal disability, means his or her representative by law;

(f) if any land or registered right in property has been attached in terms of an order of a court, means the sheriff or deputy sheriff, as the case may be;

(g) in the case of a public place, road or street under the control of a municipality, means that municipality;

(h) for the purposes of section 5, includes a lawful occupier of the land concerned; and

(i) includes the authorised representative of the owner, which authorised representative is ordinarily resident in the Republic;

''possession'' includes the exercise of a right;

''prescribed'' means prescribed by regulation;

''property'' means property as contemplated in section 25 of the Constitution;

''public interest'' includes the nation's commitment to land reform, and to reforms 10 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;

''public purpose'' includes any purposes connected with the administration of the provisions of any law by an organ of state;

''registered'' means registered or recorded with a government office in which 15 rights in respect of land, minerals or any other property are registered or recorded for public record in terms of any law;

''regulation'' means a regulation made in terms of section 28;

''service'' in relation to a notice means, as contemplated in section 24(1), to serve by delivery or tender, post, publication or in accordance with the direction of a 20 court, and ''serve'' has a corresponding meaning;

''this Act'' includes the regulations;

''unregistered right'' means a right in property, including a right to occupy or use land, which is recognised and protected by law, but is neither registered nor required to be registered;

''valuer'' in relation to land, means a person registered as a professional valuer or professional associated valuer in terms of section 19 of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000).

(2) *(a)* A Saturday, Sunday or public holiday must not be reckoned as part of any period calculated in terms of this Act.

(b) The period 20 December to 7 January inclusive, must not be reckoned as part of any period calculated in terms of this Act.

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REPUBLIEK VAN SUID AFRIKA

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PART 2 OF 3

ISSN 1682-5843

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Application of Act

2. (1) Despite the provisions of any law to the contrary, an expropriating authority may not expropriate property arbitrarily or for a purpose other than a public purpose or in the public interest.

(2) Despite the provisions of any law to the contrary, an expropriating authority may not expropriate the property of a state-owned corporation or a state-owned entity without the concurrence of the executive authority responsible for that corporation or entity.

(3) Subject to section 22, a power to expropriate property may not be exercised unless the expropriating authority has without success attempted to reach an agreement with the owner or the holder of an unregistered right in property for the acquisition thereof on reasonable terms.

(4) An expropriating authority may expropriate property in terms of a power conferred on such expropriating authority by or under any law of general application, provided that the exercise of those powers is in accordance with sections 5 to 27 and 31.

CHAPTER 2

POWERS OF MINISTER OF PUBLIC WORKS TO EXPROPRIATE

Powers of Minister to expropriate

3. (1) Subject to the provisions of Chapter 5, the Minister may expropriate property for a public purpose or in the public interest.

(2) If an organ of state, other than an expropriating authority, satisfies the Minister that it requires particular property for a public purpose or in the public interest, then the Minister must expropriate that property on behalf of that organ of state upon its written request, subject to and in accordance with the provisions of this Act.

(3) The Minister's power to expropriate property in terms of subsections (1) and (2) applies to property which is connected to the provision and management of the accommodation, land and infrastructure needs of an organ of state, in terms of his or her mandate.

(4) Where only a portion of a land parcel is expropriated, the Minister may expropriate that portion together with the remainder of the land parcel, provided that—

(a) the owner so requests; and

(b) the Minister is satisfied that due to the partial expropriation the use or potential use of the remainder of such land has become so impaired in consequence of the expropriation, that it would be just and equitable to the owner to expropriate it.

(5) When the Minister expropriates property in terms of subsection (2)—

(a) the ownership of the property vests in the relevant organ of state on the date of expropriation;

(b) the date on which the right to possession of the property vests in the relevant organ of state must be determined in terms of section 9;

(c) the relevant organ of state is liable for the fees, duties and other charges which would have been payable by that organ of state in terms of any law if it had purchased that property; and

(d) all costs incurred by the Minister in the performance of his or her functions on behalf of an organ of state must be refunded by the relevant organ of state within a reasonable time.

Delegation or assignment of Minister's powers and duties

4. (1) Subject to subsection (2), the Minister may, either generally or in relation to a particular property or in relation to a particular case, delegate or assign to an official of the Department any power or duty conferred or imposed on him or her in terms of this Act.

(2) The Minister may not delegate or assign the powers or duties conferred on him or her in terms of sections 3, 22(1), 23(1) and 28.

CHAPTER 3

INVESTIGATION AND VALUATION OF PROPERTY

Investigation and gathering of information for purposes of expropriation

5. (1) When an expropriating authority is considering the expropriation of property, he or she 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.

(2) Subject to subsection (3), if the property is land, an expropriating authority may, in writing—

(a) for purposes of subsection (1)*(a)*, authorise a person or persons with the necessary skills or expertise to—

(i) enter upon the property with the necessary workers, equipment and vehicles at all reasonable times or as may be agreed to by the owner or occupier of the property;

(ii) survey and determine the area and levels of the land;

(iii) dig or bore on or into the land;

(iv) construct and maintain a measuring weir in any river or stream;

(v) insofar as it may be necessary to gain access to the property, enter upon and go across another property with the necessary workers, equipment and vehicles; and

(vi) demarcate the boundaries of the property required for the said purpose; and

(b) authorise a valuer, for purposes of ascertaining the value of the property, to enter upon the land and any building on such land and to do the necessary inspections and investigations for that purpose.

(3) The person or persons contemplated in subsection 2*(a)* and *(b)* may not enter the property unless authorised in writing by the expropriating authority to do so, and—

(a) the owner or occupier of the property has consented thereto in writing, after being informed;

(b) the owner of the property has consented in writing to the performance of an act contemplated in subsection (2)*(a)*; or

(c) in the event of the owner or occupier refusing or failing to grant consent contemplated in paragraphs *(a)* and *(b)*, is in possession of a court order authorising the expropriating authority and such person or persons to enter the land, including any building thereon, for purposes of conducting the investigations contemplated in subsection (2).

(4) The valuer contemplated in subsection (2)*(b)* may—

(a) require the owner or occupier of the property to give him or her access to a document in the possession or under the control of the owner or occupier that the valuer reasonably requires for the purposes of valuing the property;

(b) extract information from or make copies of a document to which he or she is given access in terms of paragraph *(a)*;

(c) in writing require the owner or occupier of the property to provide him or her, either in writing or orally, with particulars regarding the property that he or she reasonably requires for the purposes of valuing the property; and

(d) despite the provisions of any law to the contrary, require the municipality in whose area the land is situated, to provide such valuer—

(i) insight into building plans of improvements on such land;

(ii) a copy or copies of building plans on such land at the cost of the valuer or valuers; and

(iii) such information in respect of municipal property rates or other charges, land use rights including the zoning of the land, availability of engineering services to such land, or such other information with respect to the land, as is in the possession of the municipality and as may be reasonably required for the valuation of the said land by the valuer.

(5) An expropriating authority must, if the information has not already been established at any time before deciding to expropriate property—

(a) by written notice call upon the following persons, to furnish in writing within 20 days from delivery of the notice, subject to section 25, the names and addresses of all known persons holding unregistered rights in the property, as well as particulars of such rights:

(i) an owner;

(ii) a person apparently in charge of the property; and

(iii) any holder of unregistered rights in the property, known to the expropriating authority;

(b) if the property is land, consult—

(i) the Departments responsible for rural development and land reform, for environmental affairs, for mineral resources and for water and sanitation and any other organ of state whose functions and

responsibilities will be materially affected by the intended expropriation, for the purposes of establishing the existence of and the impact of expropriation on rights therein; and

(ii) if applicable, with the municipality as contemplated in section 6.

(6) *(a)* A person authorised in writing to perform an act contemplated in subsection (2), must—

(i) provide the owner or occupier of the property with a copy of the said written authorisation;

(ii) at all times whilst performing any such act, be in possession of such written authority; and

(iii) identify himself or herself to the owner or occupier of the property by means of an official identification document.

(b) If the person contemplated in paragraph *(a)* fails to comply with subparagraphs (i), (ii) or (iii) of that paragraph the owner or occupier of the property may refuse that person entry to the property or may refuse the performance of an act contemplated in subsection (2).

(7) If the property in question is damaged as a result of the performance of an act contemplated in subsection (2), 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.

(8) Any legal proceedings arising out of a claim referred to in subsection (7) must comply with the relevant provisions of the Institution of Legal Proceedings Against Certain Organs of State Act, 2002 (Act No. 40 of 2002).

Consultation with municipality during investigation

6. (1) When contemplating an expropriation of land, an expropriating authority must, if not already established, in writing, request the municipal manager of the municipality where the land is situated to inform the expropriating authority of the effect which the purpose for which the property is being acquired may have on municipal planning.

(2) The request contemplated in subsection (1) must include—

(a) a statement that the expropriating authority is contemplating the acquisition of land;

(b) a full description of the land in question;

(c) details of the purpose for which the land is required; and

(d) such other details as the expropriating authority may deem necessary.

(3) The municipal manager must deliver a written response to the request contemplated in subsection (1) to the expropriating authority within 20 days of receiving the request or within a reasonable time to be agreed between the expropriating authority and municipal manager or determined in terms of section 25.

(4) If the expropriating authority is the municipal council of the municipality where the land is situated, the request contemplated in subsection (1) is not required.

CHAPTER 4

INTENTION TO EXPROPRIATE AND EXPROPRIATION OF PROPERTY

Notice of intention to expropriate

7. (1) If an expropriating authority intends to expropriate property, it must—

(a) serve a notice of intention to expropriate on the owner and any known holder of a right in the property; and

(b) publish the notice of intention to expropriate, in accordance with section 24(2).

(2) A notice of intention to expropriate must include—

(a) a statement of the intention to expropriate the property;

(b) a full description of the property;

(c) a short description of the purpose for which the property is required and the address at which documents setting out the purpose may be inspected and particulars of the purpose may be obtained during business hours;

(d) the reason for the intended expropriation of that particular property;

(e) the intended date of expropriation or, as the case may be, the intended date from which the property will be used temporarily and the intended period of such temporary use;

(f) the intended date on which the expropriating authority will take possession of the property;

(g) an invitation to any person who may be affected by the intended expropriation to lodge with the expropriating authority at a given address within 30 days after the publication of the said notice, subject to section 25—

(i) any objections to the intended expropriation;

(ii) any submissions relating to the intended expropriation;

(iii) a postal address and a facsimile number, if any, to which further communications to such person may be addressed by the expropriating authority; and

(iv) the choice of official language for the purposes of further written communication;

(h) a directive to the owner and a holder of a right contemplated in subsection (1)*(a)* to deliver or cause to be delivered in writing, within 30 days of service, subject to section 25—

(i) the names and addresses of any holders of unregistered rights and particulars of such rights, other than those furnished in accordance with section 5(5)*(a)* to the extent that such names, addresses and particulars are within the knowledge of the owner or the holder; and

(ii) a written statement stipulating the amount claimed by him or her as just and equitable compensation;

(i) a statement that if a person has an unregistered right in respect of the property of which the expropriating authority had no knowledge when making an offer of compensation, the expropriating authority may adjust that offer; and

(j) a statement drawing the owner or the holder's attention to the provisions of section 27.

(3) If the property contemplated in (1) is land, the expropriating authority must also deliver a copy of the notice referred to in subsection (1) to—

(a) the Directors-General responsible for rural development and land reform, for environmental affairs, for mineral resources and for water and sanitation, and the accounting authority of any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation, provided that if the expropriating authority is the executive authority of one of the departments or organs of state concerned, delivery of such notice to the relevant Director-General or accounting authority is not required; and

(b) the municipal manager of the municipality where the property is situated, provided that if the expropriating authority is the relevant municipal council of that municipality, no such delivery is required.

(4) Subject to section 25, an owner or a holder of an unregistered right responding to a notice contemplated in subsection (1) must within 30 days of the service of the notice or, if the notice had not been served on him or her, within 30 days of the publication, as the case may be, deliver to the expropriating authority a written statement indicating—

(a) the amount claimed by him or her as just and equitable compensation should his or her property be expropriated and furnishing full particulars as to how the amount is made up;

(b) if the property is land, full particulars of all improvements thereon which, in the opinion of such owner or holder of a right, affect the value of the land;

(c) if the property is land—

(i) which prior to the date of such notice was leased as a whole or in part by an unregistered lease, the name and address of the lessee, and accompanied by the lease or a certified copy thereof;

(ii) which prior to the date of such notice was sold by the owner, but transfer had not yet been effected, the name and address of the buyer, and accompanied by the contract of purchase and sale or a certified copy thereof;

(iii) on which a building has been erected which is subject to a builder's lien by virtue of a written building contract, the name and address of the builder, and accompanied by the building contract or a certified copy thereof; and

(d) the address at which the owner or the holder of an unregistered right desires to receive further documents in connection with the expropriation.

(5) The expropriating authority must acknowledge receipt in writing, consider and take into account all objections and submissions timeously received before proceeding with an expropriation.

(6) The expropriating authority must, within 20 days of receiving the statement contemplated in subsection (4), in writing—

(a) inform the relevant owner or relevant holder of an unregistered right whether the amount of compensation claimed in the statement is accepted; and

(b) if the amount of compensation claimed is not accepted, indicate the amount of compensation offered by the expropriating authority, furnishing full details and supporting documents in respect thereof.

(7) *(a)* If no agreement on the amount of compensation payable has been reached between the expropriating authority and the owner or the holder of

a right within 40 days of the expropriating authority receiving the statement contemplated in subsection (4), the expropriating authority must decide whether or not to proceed with the expropriation.

(b) If the expropriating authority decides—

(i) to proceed to expropriate, it must serve a notice of expropriation in terms of section 8(1) within a reasonable time;

(ii) to continue with negotiation on compensation in accordance with section 16, it must inform the owner or the holder of a right accordingly in writing within a reasonable time; or

(iii) not to proceed with the expropriation of the property, it must inform the owner or the holder of a right accordingly in writing within a reasonable time and must publish a notice of his or her decision not to proceed in terms of section 24(2).

Notice of expropriation

8. (1) If the expropriating authority decides to expropriate a property, the expropriating authority must cause a notice of expropriation to be served on the owner and the known holders of unregistered rights, as the case may be, whose rights in the property are to be expropriated.

(2) The expropriating authority must cause a copy of the notice of expropriation to be—

(a) published in accordance with section 24(2), provided that if the notice of expropriation has taken place by publication in terms of section 24(1)*(c)*, the publication in terms of this paragraph is not required;

(b) delivered to a holder of an unregistered right in the property of whom he or she 15 is aware and whose rights are not to be expropriated, and

(c) if the property is land or a right in land, delivered to—

(i) the municipal manager of the municipality where the property is situated, provided that if the expropriating authority is the municipal council the delivery of such notice is not required;

(ii) the Directors-General responsible for rural development and land reform, for environmental affairs, for mineral resources, and for water and sanitation, and the accounting authority of any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation, provided that if the expropriating authority is the executive authority of one of the departments or organs of state concerned, the delivery of the notice on the relevant Director-General or accounting authority is not required;

(iii) a holder of a mortgage bond registered in the Deeds Office in respect of the property concerned;

(iv) if the property is subject to a contract contemplated in section 7(4)*(c)*(ii), on the buyer; and

(v) if the building thereon is subject to a lien contemplated in section 7(4)*(c)*(iii), on the builder.

(3) The notice of expropriation served as contemplated in subsection (1) must contain—

(a) a statement of the expropriation of the property;

(b) the full description of the property, including—

(i) in the case where the expropriation applies to a portion of a land parcel, the approximate extent of such portion in relation to the whole; or

(ii) in the case where the expropriation applies to a right in land, a description of the approximate position of the right in land on such land;

(c) a short description of the purpose for which the property is required and the address at which documents setting out that purpose may be inspected and particulars of that purpose may be obtained during business hours;

(d) the reason for the expropriation of that particular property;

(e) the date of expropriation or, as the case may be, the date from which the property will be used temporarily and also stating the period of such temporary use;

(f) the date on which the right to possession of the property will pass to the expropriating authority; and

(g) except in the case of an urgent expropriation contemplated in section 22, the amount of compensation offered by the expropriating authority or agreed to by the expropriating authority and the owner and the holder of an unregistered right, as the case may be.

(4) The notice of expropriation served as contemplated in subsection (1) must be accompanied by documents detailing the following:

(a) the date or dates on which the expropriating authority proposes to pay the compensation and any interest payable in respect thereof in terms of section 13;

(b) in the case where the expropriation applies to a portion of a land parcel, a survey diagram or sketch plan showing the approximate position of such portion in relation to the whole;

(c) in the case where the expropriation applies to a right in land, a survey diagram or sketch plan on which the approximate position of the right in land on such land is indicated, unless the right in land is accurately described without such survey diagram or sketch plan;

(d) an explanation of what the offer of compensation referred to in subsection (3)*(g)* comprises of, together with supporting documents detailing how the offer of compensation was determined;

(e) a directive calling upon the expropriated owner and expropriated holder as the case may be, to submit in writing the names and addresses of all holders of unregistered rights in the property and particulars of such rights, other than those furnished in accordance with sections 5(5)*(a)* and 7(2)*(h)*, if any, to the extent that such names, addresses and particulars are within the knowledge of the expropriated owner;

(f) a statement that if a person has an unregistered right in respect of the property of which the expropriating authority had no knowledge when making the offer of compensation, the expropriating authority may adjust that offer;

(g) a statement informing the expropriated owner and expropriated holder, as the case may be, that he or she may request a translation of the notice of expropriation in the official language of his or her choice; and

(h) a statement drawing an expropriated owner, expropriated holder or any other person's attention to the provisions of section 27.

(5) *(a)* Rights in a property may be expropriated from different owners and holders of unregistered rights in the same notice of expropriation.

(b) A separate offer of just and equitable compensation must be stated in respect of each owner or holder mentioned in the notice of expropriation contemplated in paragraph *(a)*.

Vesting and possession of expropriated property

9. (1) The effect of an expropriation of property is that—

(a) the ownership of the property described in the notice of expropriation vests in the expropriating authority or in the person on whose behalf the property was expropriated, as the case may be, on the date of expropriation;

(b) all unregistered rights in such property are simultaneously expropriated on the date of expropriation unless—

(i) the expropriation of those unregistered rights are specifically excluded in the notice of expropriation; or

(ii) those rights, including permits or permissions, were granted or exist in terms of the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(c) in the case of a right to use a property temporarily, the expropriating authority or the person on whose behalf the property was expropriated may as from the date of expropriation exercise that right; and

(d) the property remains subject to all registered rights in favour of third parties, with the exception of a mortgage, with which the property was burdened prior

to expropriation, unless or until such registered rights are expropriated from the holder thereof in terms of this Act.

(2) *(a)* The expropriating authority, or the person on whose behalf the property was expropriated, must take possession of the expropriated property on the date stated in terms of section 8(3)*(f)* or such other date as may be agreed upon with the expropriated owner or expropriated holder.

(b) The right to possession passes on the relevant date contemplated in paragraph *(a)* to the person referred to therein, as the case may be.

(3) *(a)* The expropriated owner or expropriated holder who is in possession of the property concerned must, from the date of expropriation to the date referred to in subsection (2) or (4), take all reasonable steps to maintain the property.

(b) If the expropriated owner or expropriated holder wilfully or negligently fails to maintain the property and as a result thereof the property depreciates in value, the expropriating authority may recover the amount of depreciation from the expropriated owner or the expropriated holder, concerned.

(c) The expropriating authority must compensate the expropriated owner or expropriated holder, as the case may be, for costs which were necessarily incurred after the date of expropriation in respect of such maintenance.

(4) If the expropriated owner or expropriated holder, as the case may be, desires to place the expropriating authority in possession of the expropriated property prior to the date contemplated in section 8(3)*(f)* and the expropriating authority does not agree to a date on which the right to possession of the property will pass to it, the expropriated owner or expropriated holder, as the case may be, may give the expropriating authority notice in writing of not less than

20 days before the date on which the expropriated owner or expropriated holder wishes to transfer the right to possession of the property, in which case the right to possession of the property passes to the expropriating authority on that date.

(5) The expropriated owner or expropriated holder who is in possession of the property concerned, remains entitled to the use of and the income from the expropriated property, as was enjoyed immediately prior to the date of expropriation, from the date of expropriation to the date referred to in subsection (2)*(b)*, but remains, during that period, responsible for the payment of municipal property rates and other charges, if applicable, and normal operating costs in respect of the expropriated property as if the property had not been expropriated.

Verification of unregistered rights in expropriated property

10. (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, the expropriating authority must request that person to deliver within 30 days of receipt of the request, subject to section 25, a copy of any written instrument evidencing or giving effect to the unregistered right, if such instrument is in his or her possession or under his or her control, or any other evidence to substantiate the claim.

(2) If the unregistered right, claimed as contemplated in subsection (1), pertains to the use of improvements on expropriated land, the evidence required in terms of subsection 35(1) must include—

(a) a full description of those improvements;

(b) an affidavit or affirmation by the person concerned stating whether those improvements were erected by that person and if so, whether the materials used for erecting those improvements were owned by that person; and

(c) the amount claimed as compensation for such unregistered right, together with details or a report, if any, on how the amount is computed.

(3) After receipt of the evidence requested in terms of subsection (1) and if the unregistered right claimed pertains to land, the expropriating authority may forward that evidence to the Directors-General responsible for rural development and land reform, for environmental affairs, for mineral resources and for water and sanitation, and to the accounting authority of any other organ of state, as the case may be, for assistance in the verification of such claim.

(4) A Director-General or accounting authority referred to in subsection (3) must submit comments within 30 days of receipt of the request contemplated in that section.

(5) *(a)* The expropriating authority must decide on the claim contemplated in subsection (1) within 20 days of expiry of the period referred to in subsection (4) and notify the claimant in writing of the decision.

(b) If the expropriating authority accepts the claim contemplated in subsection (1), the expropriating authority must serve the notice contemplated in section 11(2) on such claimant.

(c) If the expropriating authority does not accept the claim contemplated in subsection (1), the expropriating authority must inform the claimant accordingly in writing and must provide reasons for the rejection.

Consequences of expropriation of unregistered rights and duties of expropriating authority

11. (1) An expropriated holder of an unregistered right in a property that has been expropriated by the operation of section 9(1)*(b)* is, subject to section 10 and this section, entitled to compensation.

(2) If the expropriating authority becomes aware that an unregistered right in the expropriated property has been expropriated by the operation of section 9(1)*(b)* and becomes aware of the identity of the expropriated holder thereof, the expropriating authority must serve on that expropriated holder a notice that the unregistered right has been expropriated, together with a copy of the notice of expropriation served on the expropriated owner in terms of section 8(1).

(3) The notice contemplated in subsection (2) must—

(a) inform the expropriated holder of the date on which the right to possession of the expropriated property passed to the expropriating authority in terms of section 9(2) or (4);

(b) contain a statement contemplated in section 8(3)*(f)*, if applicable; and

(c) except if this information was furnished in terms of section 10(1), request the expropriated holder to deliver to the expropriating authority, within 20 days of receipt of the notice, subject to section 25, a copy of any written instrument in which the unregistered right is contained, if such instrument is in his or her possession or under his or her control.

(4) When a notice in terms of subsection (2) has been served on the expropriated holder concerned, this Act applies with the changes required by the context as if such notice were a notice of expropriation in terms of section 8(1) in

respect of such unregistered right: Provided that if that expropriated holder is a lessee, he or she remains liable to pay rental to the expropriated owner until the right to possession passes in terms of section 9(2) or (4) and, if applicable, thereafter to the expropriating authority.

(5) If the expropriated owner or expropriated holder knew of the existence of an unregistered right contemplated in subsection (2) and failed to inform the expropriating authority of the existence thereof, the expropriated owner or expropriated holder, as the case may be, is liable to the expropriating authority for any loss incurred in the event of the expropriating authority having to pay compensation for the expropriation of the unregistered right after the date of payment of compensation to the expropriated owner or expropriated holder, as the case may be.

CHAPTER 5

COMPENSATION FOR EXPROPRIATION

Determination of compensation

12. (1) The amount of compensation to be paid to an expropriated owner or expropriated holder must be just and equitable reflecting an equitable balance between the public interest and the interests of the expropriated owner or expropriated holder, having regard to all relevant circumstances, including—

(a) the current use of the property;

(b) the history of the acquisition and use of the property;

(c) the market value of the property;

(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

(2) In determining the amount of compensation to be paid in terms of this Act, the expropriating authority must not, unless there are special circumstances in which it would be just and equitable to do so, take account of—

(a) the fact that the property has been taken without the consent of the expropriated owner or expropriated holder;

(b) the special suitability or usefulness of the property for the purpose for which it is required by the expropriating authority, if it is unlikely that the property would have been purchased for that purpose in the open market;

(c) any enhancement in the value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;

(d) improvements made to the property in question after the date on which the notice of expropriation was served upon the expropriated owner and expropriated holder, as the case may be, except where the improvements were in advance agreed to by the expropriating authority or where they were undertaken in pursuance of obligations entered into before the date of expropriation;

(e) anything done with the object of obtaining compensation therefor; and

(f) any enhancement or depreciation, before or after the date of service of the notice of expropriation, in the value of the property in question, which can be directly attributed to the purpose in connection with which the property was 10 expropriated.

(3) It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to:

(a) Where the land is occupied or used by a labour tenant, as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);

(b) where the land is held for purely speculative purposes;

(c) where the land is owned by a state-owned corporation or other state-owned entity;

(d) where the owner of the land has abandoned the land;

(e) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.

Interest on compensation

13. Interest, at the rate determined from time to time in terms of section 80(1)*(b)* of the Public Finance Management Act, 1999 (Act No. 1 of 1999), from the date the expropriating authority, or the person on whose behalf the property was expropriated, takes possession of the expropriated property, shall accrue on any outstanding portion of the amount of compensation payable in accordance with section 12, and becomes payable in the manner contemplated in section 17, provided that—

(a) if the expropriated owner or expropriated holder fails to comply with section 14(1) within the period referred to in that section, including any extension of such period, the amount so payable during the period of such failure and for the purposes of the payment of interest, is not regarded as an outstanding amount;

(b) until the claimant complies with the requirement of section 17(5), the amount so payable during the period of such failure and for the purposes of the payment of interest, is not regarded as an outstanding amount;

(c) interest due in terms of this subsection must be regarded as having been paid on the date on which the amount has been made available or by prepaid registered post dispatched to the expropriated owner or the expropriated holder concerned, or electronically transferred to his or her account, as the case may be;

(d) a payment, utilisation or deposit of an amount in terms of section 17(1), 19(2) or 20(1) or (2) must be regarded as being a payment to the expropriated

owner or an expropriated holder and no interest accrues on any such amount as from the date on which it has been so paid, utilised or deposited.

Compensation claims

14. (1) An owner or a holder of an unregistered right who receives a notice of expropriation in terms of section 8(1) must, subject to section 25, within 20 days from the date on which that notice was served on that owner or holder deliver or cause to be delivered to the expropriating authority a written statement—

(a) either confirming that the compensation as stipulated in such notice was agreed to or, if applicable, indicating whether the offer of compensation stipulated in such notice is accepted;

(b) if no compensation was offered, as in the case of an urgent expropriation in terms of section 22, or if such offer in the notice is not accepted, indicating the amount claimed by such owner or holder as just and equitable compensation;

(c) furnishing full particulars as to how the amount contemplated in paragraph *(b)* is made up, including a copy of a valuation, other professional report or other document that forms the basis of the compensation claimed, if any;

(d) if the property expropriated is land, furnishing full particulars of—

(i) improvements on the land that in the opinion of the owner or the holder affect the value of that land; and

(ii) all unregistered rights that exist in respect of such land and that he or she is aware of, including the name and address of the holder of such unregistered right and a copy of any written instrument

evidencing or giving effect to an unregistered right, in his or her possession or under his or her control;

(e) the physical address or postal address, facsimile number and email address, if any, to or at which further documentation in connection with the expropriation must be delivered; and

(f) such information and annexing such documentation as may be prescribed by the Minister in order to facilitate electronic payment of compensation to the expropriated owner or expropriated holder.

(2) If the property expropriated is land—

(a) the expropriated owner must deliver or cause to be delivered to the expropriating authority, subject to section 25, within 30 days of the expropriating authority requesting, the title deed to such land or, if it is not in 10 his or her possession or under his or her control, written particulars of the name and address of the person in whose possession or under whose control the title deed is; and

(b) the person referred to in paragraph *(a)* in whose possession the title deed may be, must deliver or cause to be delivered the title deed in question to the expropriating authority within 20 days of the expropriating authority requesting it, subject to section 25.

Offers of compensation

15. (1) If the expropriating authority does not accept the amount claimed by a claimant in terms of section 14(1) the expropriating authority must, within 20 days of 20 delivery of the statement contemplated in that section, make

an offer of just and equitable compensation to the claimant in writing, furnishing full particulars of how such amount is made up and calculated.

(2) The offer of compensation contemplated in subsection (1) must be accompanied by copies of reports detailing how the offer of compensation was determined, if the amount is different from the amount offered by the expropriating authority in terms of section 8(3).

(3) The provisions of section 21 shall apply if—

(a) an owner or holder of an unregistered right does not deliver a statement in terms of section 14(1); or

(b) the claimant does not accept the offer of compensation contemplated in subsection (1), by written reply within 20 days, or within such additional time as may be permitted in terms of section 25.

Requests for particulars and offers

16. (1) The expropriating authority and the claimant may from time to time in writing deliver a request for reasonable particulars regarding the claimant's claim for just and equitable compensation or the offer of just and equitable compensation, as the case may be, and particulars so requested must be furnished within 20 days of such request.

(2) If the expropriating authority or the claimant fails to comply with a request in terms of subsection (1), the requesting party may apply to a court on notice for an order directing the defaulting party to comply with subsection (1), and the court may make such an order.

(3) A claim for just and equitable compensation and an offer of just and equitable compensation remain in force until—

(a) such compensation claimed or offered is revised by the claimant or expropriating authority, as the case may be;

(b) the amount of compensation has been agreed to by the expropriating authority and the claimant; or

(c) the compensation has been decided or approved by a court.

Payment of amount offered as compensation

17. (1) An expropriated owner or expropriated holder is entitled to payment of compensation 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), subject to sections 18, 19 and 20.

(2) The payment, utilisation or deposit of any amount contemplated in sections 18, 19 and 20 does not preclude the determination of an amount by agreement or by a court: Provided that where the amount so determined is less than the amount paid, the difference must be refunded to the expropriating authority together with interest at the rate contemplated in section 13 from the date on which the amount was so paid, utilised or deposited.

(3) Any delay in payment of compensation to the expropriated owner or expropriated holder by virtue of subsection (2) or any other dispute arising will not prevent the passing of the right to possession to the expropriating authority in terms of sections 9(2) or (4), unless a court orders otherwise.

(4) If the expropriating authority or expropriated owner or expropriated holder has proposed a later date than the date contemplated in subsection (1) for the payment of compensation, the party proposing later payment may, in the absence of agreement, apply to court for an order for payment on such later date, and the court may make an 10 appropriate order, having regard to all relevant circumstances.

(5) If value-added tax is leviable by a claimant in terms of section 7(1)*(a)* of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), by virtue of section 8(21) of that Act, payment of compensation must be made by the expropriating authority only upon receipt of a tax invoice as required in terms of section 20 of that Act from the claimant, 15 together with confirmation of the tax compliance status of the claimant by the South African Revenue Service.

(6) The Minister may prescribe the information and documentation to be delivered by a person to whom compensation or interest is payable in terms of this Act, in order to facilitate electronic payment thereof.

Property subject to mortgage or deed of sale

18. (1) If property expropriated in terms of this Act was, immediately prior to the date of expropriation, encumbered by a registered mortgage or subject to a deed of sale, the expropriating authority may not pay out any portion of the compensation money except to such person and on such terms as may have been agreed upon between the expropriated owner or expropriated holder and the mortgagee or buyer concerned, as the case may be, after the claimant has notified the expropriating authority of the agreement.

(2) The expropriated owner or expropriated holder and the bond holder or buyer, as the case may be, must notify the expropriating authority by no later than 30 days from the date contemplated in section 9(2) or (4), of their agreement and its terms contemplated in subsection (1), failing which the expropriating authority may deposit the compensation money with the Master in terms of section 20(2).

(3) In the event of a dispute arising out of subsection (1), the expropriating authority may deposit the compensation money with the Master, and any of the disputing parties may apply to a court of competent jurisdiction for an order directing the Master to pay out the compensation money in such manner and on such terms as the court may determine.

Payment of municipal property rates and other charges out of compensation money

19. (1) For the purposes of this section, the charges referred to are municipal rates, taxes or other charges that must be paid in order for ownership of land to be transferred by the registrar of deeds to the expropriating authority through registration in the deeds office.

(2) If land which has been expropriated is subject to the charges contemplated in subsection (1), the municipal manager must, within 30 days of receipt of a copy of the notice of expropriation in terms of section 8(2)*(c)*(i), inform the expropriating authority in writing of such charges, as at the date contemplated in section 9(2) or (4): Provided that if the expropriating authority is the municipal council of the municipality where the land is situated, the notice is not required.

(3) *(a)* The expropriating authority must in writing, by registered mail, inform the expropriated owner or expropriated holder of any outstanding charges contemplated in subsection (1).

(b) If the said amount is not disputed in writing by the expropriated owner or expropriated holder within 20 days of the notification, the expropriating authority may utilise as much of the compensation money in question as is necessary for the payment, on behalf of the expropriated owner or expropriated holder, of any outstanding charges contemplated in subsection (1).

(4) If the municipal manager fails to inform the expropriating authority of the outstanding charges contemplated in subsection (1) within the 20 days, the expropriating authority may pay the compensation to the expropriated owner or expropriated holder without regard to the outstanding municipal property rates or other charges, and in such an event and despite the provisions of any law to the contrary—

(a) the Registrar of Deeds must register transfer of the expropriated property;

(b) the expropriating authority or the person on whose behalf the property was expropriated, as the case may be, is not liable to the municipality concerned before or after such registration for the outstanding municipal property rates or other charges; and

(c) the expropriated owner or expropriated holder, as the case may be, continues to be liable to the municipality for the outstanding rates and charges calculated up to the date of possession, notwithstanding the registration of the expropriated property in the name of the expropriating authority or person on whose behalf the property was expropriated, as the case may be.

Deposit of compensation money with Master

20. (1) The expropriating authority must deposit the amount of compensation payable in terms of this Act with the Master after which the expropriating authority ceases to be liable in respect of that amount—

(a) if a property expropriated under this Act was left in terms of a will or testament to an undetermined beneficiary or beneficiaries;

(b) if compensation is payable in terms of this Act to a person whose address is not readily ascertainable or who, unless otherwise agreed, fails to supply the prescribed information and documentation for electronic payment within 20 days of being given written notice to do so; or

(c) if compensation is payable and the expropriating authority, after reasonable endeavours, is unable to determine to whom it must be paid.

(2) In the event of a dispute or doubt as to the person who is entitled to receive compensation payable in terms of this Act, or in the event that an interdict prevents the expropriating authority from paying compensation to that person, the expropriating authority may deposit the amount of compensation with the Master.

(3) Any money received by the Master in terms of subsection (1) or (2) must be paid into the guardian's fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), for the benefit of the persons who are or may become entitled thereto and bear interest at the interest rate determined in terms of section 80(1)*(b)* of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(4) A court of competent jurisdiction may make an order which it may deem expedient in respect of money received by the Master in terms of subsection (1) or (2).

CHAPTER 6

MEDIATION AND DETERMINATION BY COURT

Mediation and determination by court

21. (1) If the expropriating authority and expropriated owner or expropriated holder do not agree on the amount of compensation, they may attempt to settle the dispute by mediation, which must be initiated and finalized without undue delay by either party.

(2) If the expropriating authority and disputing party are unable to settle the dispute by consensus in the manner contemplated in subsection (1) or if the disputing party did not agree to mediation, the expropriating authority must refer the matter to a competent court to decide or approve just and equitable compensation provided that nothing in this section alters the ordinary civil onus.

(3) Subsection (2) does not preclude a person from approaching a court on any matter relating to the application of this Act.

(4) Where a court finds that a provision of this Act has not been complied with, it must make such order as it considers just and equitable, having regard to all relevant circumstances, including—

(a) the nature and extent of the interest of the person who has challenged the conduct in question;

(b) the materiality of the non-compliance;

(c) the stage which has been reached in the expropriation process; and

(d) the interests of other persons which may be affected by the relief which is ordered.

(5) A dispute on the amount of compensation alone shall not preclude the operation of section 9.

CHAPTER 7

URGENT EXPROPRIATION

Urgent expropriation

22. (1) An expropriating authority may, if a property is required on an urgent basis, take a right to use property temporarily for so long as it is urgently required for a period 10 not exceeding 12 months.

(2) The power referred to in subsection (1) may only be exercised if suitable property held by the national, provincial or local government is not available under the following circumstances:

(a) in the case of a disaster, as defined in the Disaster Management Act, 2002 (Act 15 No. 57 of 2002); or

(b) where a court grants an order that an expropriating authority is entitled to use the provisions of this section due to—

(i) urgent and exceptional circumstances that justify action under subsection (1);

(ii) real and imminent danger to human life or substantial injury or damage to property; or

(iii) any other ground which in the view of the court justifies action under subsection (1).

(3) Should an expropriating authority exercise the power referred to in subsection (1), the expropriating authority will be exempted from compliance with the provisions of sections 5(1), 6(1) and 7(1).

(4) The owner or the holder of an unregistered right whose right in property has been taken for temporary use in terms of this section is entitled to just and equitable compensation as calculated, determined and paid in terms of this Act.

(5) The expropriating authority must make a written offer of compensation to the expropriated owner or expropriated holder of an unregistered right within 30 days from the date on which the notice to use the property temporarily was given, and payment must be made within a reasonable time thereafter: Provided that in the event of any dispute, the provisions of section 21 apply.

(6) If the property taken for temporary use in terms of this section is damaged during the use of the property, the expropriating authority must repair such damage or compensate the owner or the holder of an unregistered right concerned for the damage.

(7) *(a)* If an expropriating authority wishes to extend the period of temporary usage beyond 12 months and the owner or the holder of an unregistered right whose right in property has been taken does not agree thereto, the expropriating authority may approach the court for an extension of the period.

(b) The court may, on sufficient cause shown by the expropriating authority, extend the period of temporary usage.

(c) The period of extension may not exceed a period of 18 months from the date the property was taken for temporary use in terms of subsection (1).

(8) If the court refuses to grant an extension as applied for in terms of subsection (7), the expropriating authority must vacate the property on the expiry of the period of temporary use or on the date agreed to by the parties or determined by the court.

(9) An expropriating authority may at any time during the temporary use of the property, commence with the expropriation of the property and must comply with all relevant provisions of this Act.

CHAPTER 8

WITHDRAWAL OF EXPROPRIATION

Withdrawal of expropriation

23. (1) *(a)* Notwithstanding anything to the contrary contained in any law, the expropriating authority may withdraw any expropriation from a date mentioned in a notice of withdrawal if the withdrawal of that expropriation is in the public interest or the reason for which the property was expropriated is no longer applicable.

(b) The notice of withdrawal contemplated in paragraph *(a)* must be served on every person on whom the notice of expropriation in question was served.

(2) An expropriation may not be withdrawn—

(a) after the expiration of three months from the date of expropriation, except with the written consent of the expropriated owner and all expropriated holders or, in the absence of a written consent, if a court, on application by the expropriating authority, authorises the withdrawal on the ground that it is in the public interest that the expropriation be withdrawn;

(b) if, where the expropriated property is land, the property has already been registered in the name of the expropriating authority in consequence of the expropriation; or

(c) if the expropriating authority has already paid compensation in connection with such expropriation, unless the agreement in writing of every person to whom the compensation has been paid is obtained.

(3) If an expropriation of property is withdrawn—

(a) ownership of the property concerned again vests, from the date contemplated in subsection (1), in the owner from whom it was expropriated, and any mortgage or other rights discharged or expropriated in connection with or as a consequence of the expropriation are fully revived;

(b) the Registrar of Deeds or the registrar of any other office at which such expropriated right was registered or recorded must, on receipt of a copy of the notice of withdrawal, cancel any endorsement made in connection with the expropriation in his or her registers and on the title deed in question; and

(c) the expropriating authority is liable for all reasonable costs and damages incurred or suffered by a claimant as a result of such withdrawal.

CHAPTER 9

RELATED MATTERS

Service and publication of documents and language used therein

24. (1) Whenever a notice in terms of section 7(1), a notice of expropriation, a notice in terms of section 11(2) to an expropriated holder or a notice of withdrawal in terms of section 23(1)*(b)* is required to be served in terms of this Act, the original or a certified copy thereof must—

(a) be delivered or tendered to the addressee personally at his or her residential address, place of work, place of business or at such address or place as the expropriating authority and the addressee may, in writing, agree upon;

(b) be posted by pre-paid registered post to the postal address of the addressee;

(c) be published in the manner contemplated in subsection (2)—

(i) if the whereabouts of the person concerned are unknown to the expropriating authority and is not readily ascertainable, after taking reasonable steps; or

(ii) in the case of *fideicommissaries* in respect of a property which is subject to a *fideicommissum* and it is not known to the expropriating authority who all the *fideicommissaries* are or will be; or

(d) if none of the modes of service set out in paragraphs *(a)* to *(c)* is practicable under the circumstances, be served in accordance with such directions as the court, on application, may direct.

(2) Whenever publication of a notice in terms of section 7(1) or (7)*(b)*(iii), a notice of expropriation or other document is required by this Act, publication must take place—

(a) by the publication of the notice or document in English and in any other official language commonly used in the area where the property is situated once in the *Gazette* and, simultaneously therewith or not more than one week thereafter, once in the said languages in two widely circulated and accessible newspapers of different languages circulating in the area in which the property is situated;

(b) if the property is land, by the display of the notice in the said languages on such land in a conspicuous place, from not later than the date of publication in the *Gazette* contemplated in paragraph *(a)*; and

(c) if the expropriating authority deems it necessary in the circumstances, by the advertising in such languages as may be appropriate on television or radio, transmitting to the area where the property is situated in the languages commonly used in that area, the contents of the advertisement to adhere as closely as is practicable to the contents of the notice or document so advertised.

(3) Whenever a document must or may be delivered in terms of this Act, delivery must take place by delivering—

(a) to the owner and holder of an unregistered right in a property known to the expropriating authority, at the address appointed in the notice in terms of section 7(1), the notice of expropriation, the notice in terms of section 11(2) or other document, as the case may be; and

(b) to any owner, holder of an unregistered right, person who has lodged an objection or submission contemplated in section 7(2)*(g)*, expropriated owner and expropriated holder, at the address or facsimile number appointed by such person in terms of this Act, or in the absence thereof—

(i) at an address supplied in respect of such person in terms of this Act;

(ii) at the residential or postal address of such person, if known to the expropriating authority; or

(iii) if no address of such person is known to or readily ascertainable by the expropriating authority, by publication in the manner contemplated in subsection (2)*(a)*.

(4) The delivery contemplated in subsection (3) must take place at the address in question either by—

(a) hand;

(b) facsimile transmission, provided that a confirmatory copy of the document is sent by ordinary mail or by any other suitable method within one day of such transmission; or

(c) registered post.

(5) Whenever a document or a part of a document which is in colour has to be delivered, every copy thereof which is delivered, and in the case of a facsimile transmission, the confirmatory copy, must be in the same colour as the original.

(6) All documents must be in English and if an addressee has prior to a communication expressed in writing a preference for another official language, also in that preferred official language.

(7) Every addressee who has received a written communication from the expropriating authority is entitled to request, in writing, a translation of that communication into the official language indicated in the request.

Extension of time

25. Wherever a period is mentioned within which something must be done in terms of this Act, the expropriating authority may, on written request and good cause shown by the relevant owner or relevant holder of a right in property or other interested or affected person, as the case may be, from time to time extend that period for a further period or periods as may be reasonable in the circumstances.

Expropriation register

26. (1) The Director-General must ensure that a register of all expropriations that are intended, effected and withdrawn, and of decisions not to proceed with a contemplated expropriation by all expropriating authorities, is opened, maintained and accessible to the public.

(2) All expropriating authorities must deliver to the Department a copy of any notice of an intended expropriation, expropriation and withdrawal of expropriation, and of any decision not to proceed with an intended expropriation, within 20 days of the service or delivery of such notices.

Civil fines and offences

27. (1) A person commits a breach of this Act if that person fails to—

(a) comply with a directive by the expropriating authority in terms of section 7(2)*(h)*(i);

(b) deliver to the expropriating authority a statement contemplated in section 7(4)*(c)*(i), (ii) or (iii); or

(c) provide the information contemplated in section 8(4)*(e)*.

(2) A civil court may impose a fine up to a maximum prescribed amount, in favour of the National Revenue Fund, on a person referred to in subsection (1), upon application by the expropriating authority brought on notice to the affected person.

(3) The rules of the relevant court apply to the application referred to in subsection (2).

(4) The breach referred to in subsection (1) is not a criminal offence.

(5) A person who wilfully furnishes false or misleading information in any written instrument which he or she by virtue of this Act delivers or causes to be delivered to an expropriating authority, is guilty of an offence and liable on conviction to be punished as if he or she had been convicted of fraud.

Regulations

28. (1) The Minister may, by notice in the Gazette, make regulations regarding—

(a) any matter that may or must be prescribed in terms of this Act; and

(b) any ancillary or incidental administrative or procedural matter that may be necessary for the proper implementation or administration of this Act.

(2) *(a)* The Minister must, before making any regulations contemplated in subsection (1), publish the draft regulations for public comment.

(b) The period for submitting comments must be at least 20 days from the date of publication of the draft regulations.

Interpretation of other laws dealing with expropriation

29. (1) Subject to section 2, any law dealing with expropriation of property that was in force immediately before the date on which this Act came into operation, must be interpreted in a manner consistent with this Act, and for that purpose any reference in any such law to—

(a) a functionary authorised to expropriate property, must be construed as a reference to an expropriating authority; and

(b) compensation as provided for in sections 12 and 13 of the Expropriation Act, 1975 (Act No. 63 of 1975), must be construed as a reference to compensation contemplated in the provisions of section 25(3) of the Constitution and the provisions of this Act.

(2) In the event of a conflict between this Act and any other law contemplated in subsection (1) in relation to matters dealt with in this Act, this Act prevails.

Repeal of laws

30. The laws mentioned in the second column of the Schedule are hereby repealed to the extent set out in the third column.

Transitional arrangements and savings

31. (1) This Act does not apply to any expropriation initiated through delivery of a notice of expropriation prior to the date of commencement of this Act or to any consequences of any expropriation initiated prior to the date of commencement of this Act.

(2) Any proceedings for the determination of compensation in consequence of an expropriation contemplated in paragraph *(a)* must be instituted, or if already instituted must be concluded, as if this Act had not been passed: Provided that the parties concerned may agree to the application of this Act to such expropriation or proceedings in which case the relevant provisions of this Act apply to the extent agreed upon between the parties as if it were an expropriation or proceedings for the determination of compensation in terms of this Act.

Short title and commencement

32. (1) This Act is called the Expropriation Act, 2019, and comes into operation on a date determined by President by proclamation in the *Gazette*.

(2) Different dates may be determined in respect of different provisions of this Act.

SCHEDULE

(Section 30)

No. and year of Act	Short title	Extent of repeal
Act No. 63 of 1975	Expropriation Act, 1975	The whole
Act No. 19 of 1977	Expropriation Amendment Act, 1977	The whole
Act No. 3 of 1978	Expropriation Amendment Act, 1980	The whole
Act No. 21 od 1982	Expropriation Amendment Act, 1982	The whole
Act No. 45 of 1992	Expropriation Amendment Act, 1992	The whole

Appendix 2:

DPWI. 2019. Socio-economic Impact Assessment System (SEIAS) Revised (2019): Final Impact Assessment Template – Phase 2. Name of the Proposal: Expropriation Bill [B-2019].

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE (CLUSTERS ONLY):

This is to confirm that:

1. The Presidency has assessed the Socio-Economic Impact Assessment (SEIAS) Report as per the following:

    * Initiating Department : Public Works and Infrastructure
    * Name : Expropriation Bill
    * Type of Assessment : Final Impact Assessment

2. A Final Sign Off Form will be issued once Clusters' Recommendations are addressed and Cabinet Submission is finalised.

3. Verified and signed off by SEIAS Unit:

    Official Stamp and Date

planning, monitoring and evaluation
Department:
Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA
SEIAS
Socio-Economic Impact Assessment System
No: 0076
AUTHENTIC AND OFFICIAL
STAMP OF APPROVAL
CLUSTER ONLY
Date: 24/10/2019

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE SIGN- OFF FORM

This is to confirm that:

1. The Presidency has assessed the Socio-Economic Impact Assessment (SEIAS) Report as per the following:

   * Initiating Department : Public Works and Infrastructure
   * Name : Expropriation Bill
   * Type of Assessment : Final Impact Assessment

2. The initiating department has been given feedback and incorporated all inputs as contained in the Final Socio-Economic Impact Assessment report.

3. Permission is granted to the Department to proceed with submission of the Expropriation Bill and the SEIAS Final Impact Assessment report to Cabinet.

4. Verified and signed off by SEIAS Unit:

   Official Stamp and Date

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE SIGN- OFF FORM (CABINET)

This is to confirm that:

1. The Presidency has assessed the Socio-Economic Impact Assessment (SEIAS) Report as per the following:

    * Initiating Department : Public Works and Infrastructure
    * Name : Expropriation Bill
    * Type of Assessment : Final Impact Assessment

2. The initiating department has been given feedback and incorporated all inputs as contained in the Final Socio-Economic Impact Assessment report.

3. Permission is granted to the Department of Public Works and Infrastructure to proceed with the submission of the Expropriation Bill and the SEIAS Final Impact Assessment report to Cabinet.

4. Verified and signed off by SEIAS Unit:

    Official Stamp and Date

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
POLICY AND RESEARCH SERVICES
SEIAS
Socio-Economic Impact Assessment System
No: 172
AUTHENTIC AND OFFICIAL
STAMP OF APPROVAL
FINAL
Date: **2020/05/29**

THE PRESIDENCY

REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

REVISED (2019): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2

NAME OF THE PROPOSAL: EXPROPRIATION BILL [B-2019]

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the DMPE on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.

PART ONE: ANALYSIS FOR FINAL SEIAS REPORT

Please keep your answers as short as possible. Do not copy directly from any other document.

1. Conceptual Framework, Problem Statement, Aims and Theory of Change

1.1. What socio-economic problem does the proposal aim to resolve?

The proposed legislative reform measure is intended to empower the State to effectively remove the hitherto institutionalised socio-economic barriers to access property and natural resources. The removal of the socio-economic barriers alluded to above requires a special measure such as the Expropriation Bill, 2019 to grant the state extraordinary authority to compulsorily take immovable property from persons and corporations for use in the public interest.

The public interest in the main refers to land and water reforms, the creation of a sustainable environment and sustainable human settlements. The proposed legislative reform will furthermore enable South Africans to access property and natural resources on an equitable and fair footing.

Section 25(8) of the Constitution, 1996 permits the state to enact legislation that would facilitate the achievement of land, water and related reform in order to redress the results of past racial discrimination.

The Department's mandate to review the Expropriation Act 63 of 1975 is derived from a Cabinet approval of 15 September 2004. This was the beginning of a process to address the identified socio-economic problem.

The Draft Policy on the Expropriation Bill was subsequently gazetted for public comment in November 2007.This was followed by workshops and public hearings in Parliament during 2008;

The Expropriation Bill [B16-2008] was however withdrawn from Parliament in September 2008 to allow for further consultations. In March 2013 Cabinet approved that the revised draft Bill be gazetted for public comment;

NEDLAC adopted its task team's report on the Bill in February 2014 which largely supported it

The Bill was submitted to Parliament for the second time in February 2015 and a year later, on 26 May 2016 the Expropriation Bill[B4D-2015] was passed into

law. Following objections, the President refrained from assenting to the Bill and instead invoked section 79(1) of the Constitution to remit the Bill to Parliament.

Parliament deliberated on the matter and on 4 September 2018 rejected the Bill which signalled the rescission of the previous decision to pass the Bill.

Parliament then passed a motion to establish the Joint Constitutional Review Committee to look into the feasibility of amending section 25 of the Constitution to explicitly provide for expropriation of property with nil compensation.

The Expropriation Bill, 2019 seeks to particularly facilitate the achievement of land reform and sustainable human settlements by means of the insertion of clause 12(3) in the proposed legislation.

Clause 12(3) of the Expropriation Bill [B-2019] caters for expropriation with nil compensation in certain specified circumstances.

Clause 12(3) of the Expropriation Bill, 2019 is an extension to the general compensation scheme provided for in section 25(3) of the Constitution, 1996. Clause 12(3) provides as follows;

" It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to:

(a) When a court or arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), it may be just and equitable for no compensation to be paid having regard to all circumstances;

(b) where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value;

(c) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to need the land for its future activities in that regard, and the organ of state acquired the land for no consideration;

(d) notwithstanding registration of ownership in terms of the Deeds Registries Act 47 of 1937, where an owner has abandoned land by failing to exercise control over it;

(e) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.

(f) when the nature or condition of the property poses a health, safety or physical risk to persons or other property.

The proposed measure seeks to facilitate access to land on a non-discriminatory basis related to gender, sex, age, disability, religious belief and political affiliation has the potential to reduce unemployment[1], poverty, homelessness, criminality and morbidity. The benefits thereof would be the promotion of entrepreneurship, food security and productivity of the nation in general.

1.2 What are the main roots or causes of the problem?

The legal regime had discriminated unfairly against black South Africans prior to 1994. This unfair discrimination hindered blacks from participating equally with their white compatriots in the economy. The Expropriation Act, 1975 is one of the legion of discriminatory legislative measures that were applied by the then governments to dispossess black South Africans of their properties and thereby reduce them to penury by denying them compensation or fair compensation, if at all.

A pointed example of the public purpose to which the Expropriation Act, 1975 and expropriation law before it were used was to acquire land for the South African Development Trust (SADT) with the objective of homeland consolidation. The results of the homeland system were the creation of a migrant labour system, lack of economic opportunities, poverty, overcrowding and generally the absence of the necessary amenities of life for the black populace.

1.2. What are the main root causes of the problem identified above?

What socio-economic problem does the proposal aim to resolve	**What are the main roots or causes of the problem**
Inequitable access to property and natural resources.	Unregistered /informal rights not recognised and thus non compensable; No recourse to legal institutions due to non recognition of unregistered rights thus no equal protection and benefit of the law. Inequality before the law
	Old order legislation; Property speculation; Inadequate government programmes due to lack of effective planning and execution.
.	Lack of economic opportunities.
	Inadequate state property disposal mechanisms;

[1] Stats SA media release of 30 July 2019 reports unemployment rate increased by 1,4% to 29,0% (Source- Stats SA QLFS- Q2:2019)

	Incoherent and burdensome legislative regimes; Property speculation; and Abandoned properties.

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The aim of the Expropriation Bill, 2019 is to foster a uniform expropriation dispensation for organs of state in the three spheres of government. This will be achieved through the reinforcement of the principles of co-operative government and intergovernmental relations and the introduction of an expropriation register.

Alignment of the Expropriation Bill, 2019 to the Constitution, 1996 will ensure that the proposal gives effect to the administrative justice and equality provisions of the Constitution. This will ensure that every person affected by expropriation is given a fair chance to make representations and be heard, appeal or review any adverse decision or approach the courts to seek redress. This approach to expropriation of property in effect affirms the Rule of Law principle.

The Expropriation Bill, 2019 further obviates the possibility of an irrational expropriation by requiring consultation with affected parties. This approach is desirable to ensure that the economic potential of property identified for acquisition by an expropriating authority is unlocked as also the attendant viability aspects of such an acquisition. Issues such as the nature and extent of economic opportunities to be provided by a particular expropriation of property will thus be known in advance.

1.4. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

Option 1.	The Expropriation Act 63 of 1975 currently fulfils the role of the required law of general application referred to at section 25(2) of the Constitution, 1996. To date, Courts have interpreted this legislation by applying the provisions of the Constitution,1996 directly to it as a way of harmonising it with the spirit and purport of the constitutional provisions. The Constitutional Court has adjudicated several expropriation disputes applying the Constitution directly to the Expropriation Act,1975. However, this piecemeal approach is unsustainable and has its inherent risks and flaws. The one major risk is the possibility of an erroneous judgement based on a wrong interpretation of the Expropriation Act, 1975 and the resultant wrong interpretation and application of the constitutional provisions of the matter for decision before the Constitutional Court. As the court of last instance, such an erroneous judgement by the Constitutional

	Court cannot be undone. The policy cost implications for such a scenario could be high due to the undesirable convoluted application of the law that would have preceded the judgement alluded to above.
Option 2.	The Restitution of Land Rights Act 22 of 1994 , other land reform legislation, Deeds Registries Act 47 of 1937, Electricity Regulation Act 4 of 1986, Infrastructure Development Act 23 of 2014 and many others provide for expropriation of property as a way of implementing their respective programmes. The programmes implemented through expropriation of property using the legislations referred to earlier includes the cross referencing and application of the provisions of the Expropriation Act, 1975. The Restitution programme has for instance enhanced its expropriation processes by developing a customised expropriation process that incorporates the compensation provisions of the Constitution and the administrative justice provisions of PAJA. This has effectively rendered the applicability of the compensation provisions of the Expropriation Act, 1975 in so far as the Restitution of land rights programme obsolete although it remains on the statute books.

PART TWO: IMPACT ASSESSMENT

2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of conflict
Expropriation (Establishment of Undertakings) Act 39 of 1951	Trade and Industry	**Sections 2 & 3**	None
Harbour Construction Act 28 of 1972	Transport	**Section 2**	None
Urban Transport Act 78 of 1977	Transport	**Section 20**	None
Conservation of Agricultural Resources Act 43 of 1983	Agriculture, Land Reform and Rural Development	**Section 14**	None
Less Formal Township Establishment Act 113 of 1991	Agriculture, Land Reform and Rural Development	**Section 2**	None

Airports Company Act 44 of 1993	Transport	**Section 16**	None
Air Traffic And Navigation Services Company Act 45 of 1993	Transport	**Section 15**	None
Provision of Land and Assistance Act 126 of 1993	Agriculture, Land Reform and Rural Development	**Section 12**	None
Restitution of Land Rights Act 22 of 1994	Agriculture, Land Reform and Rural Development	**Section 42E**	None
Extension of Security of Tenure Act 62 of 1997	Agriculture, Land Reform and Rural Development	**Section 26**	None
South African Schools Act 84 of 1996	Basic Education	**Section 58**	None
Housing Act 107 of 1997	Human Settlements	**Section 9(3)**	None
Water Services Act 108 of 1997	Water and Sanitation	**Section 81**	None
National Water Act 36 of 1998	Water and Sanitation	**Section 64 and 65**	None
The South African National Roads Agency Limited and National Roads Act 7 of 1998	Transport	**Section 41**	None
National Forests Act 84 of 1998	Environment, Forestry and Fisheries	**Section 49**	None
National Environmental Management Act 107 of 1998	Environment, Forestry and Fisheries	**Section 36**	None
National Heritage Resources Act 25 of 1999	Sports, Arts and Culture	**Section 46**	None
Nuclear Energy Act 46 of 1999	Mineral Resources and Energy	**Section 44**	None
World Heritage Convention Act 49 of 1999	Sports, Arts and Culture	**Section 30**	None
Local Government: Municipal Systems Act 32 of 2000	Co-operative Governance	**Section 60**	None
Gas Act 48 of 2001	Mineral Resources and Energy	**Section 32**	None

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

The proposed regulatory measure is intended to align the authority of the state to use its dominant position to unilaterally acquire privately held property for use in the public interest with the values and provisions of the Constitution,1996.

The power of the state to expropriate in terms of the Expropriation Act 63 of 1975 is generally unfair to the private property owner. This is manifested by lack of administrative justice, disproportionate treatment of legal subjects and non-facilitation of equitable access to property and natural resources in the existing expropriation legislation.

b) How does the proposal aim to bring about the desired change?

The proposed expropriation legislation intends to introduce a uniform expropriation framework for organs of state in the national, provincial and local spheres of government.

This will be achieved through the implementation of uniform procedure and norms for expropriation. In order to facilitate the acquisition of privately owned property in a cost effective manner, compensation for expropriation will be determined at nil in certain specified instances to enable the state to meet its socio-economic objectives.

2.3. Consultations

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

Consulted Government Departments, Agencies and Other Organs of State

Department's name	What do they see as main benefits, Implementation/ Compliance costs and risks?	Do they support or oppose the proposal?	What amendments do they propose?	Have these amendments been incorporated in your proposal? If yes, under which section?
Agriculture, Land Reform & Rural Development	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A
Human Settlements	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	Proposed that the urgent expropriation provisions cater explicitly for the Emergency Housing Programme.	This is a form of an emergency already catered for under the urgent expropriation provisions.
Environment, Forestry & Fisheries	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	That the proposal specifically provide for expropriation for environmental purposes.	No. Section 36 of the National Environmental Management Act 107 of 1998 already bestows the power to expropriate on the Minister of Environment, Forestry & Fisheries.

Justice & Constitutional Development	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability. Negotiations. investigations. Negotiations	They support the proposal.	Amendment of definition of court and amendment of mediation to conciliation	Definition of Court and Clause 21(2)
Transport	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations	They support the proposal.	None	N/A
Basic Education	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A
South African Police Service	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A
Arts and Culture	The proposal will streamline the procedure for expropriation. Gazette notices and property suitability investigations. Negotiations.	They support the proposal.	None	N/A

Consulted stakeholders outside government

Name of Stakeholder	What do they see as main benefits, Implementation/ Compliance costs and risks?	Do they support or oppose the proposal?	What amendments do they propose?	Have these amendments been incorporated in your proposal?
(National Forum For Dialogue 27-28 March 2018) AgriSA	Measure will enable access to agricultural land to the previously excluded. AgriSA through its value chain network could get new entrants into contact with established markets or access to credit line. Concerned about the monitoring of activities on expropriated land to ensure full utilisation thereof in accordance with original purpose. Food insecurity risk is a serious threat. Most commercial farmers no longer willing to invest on land due to fear of expropriation without compensation. Banks no longer view farming as safe for lending money due to the uncertainty created by the proposal.	They cautiously support the proposal	Market value should remain as key property valuation criterion.	No.
Banking Association of South Africa	Measure could open up business partnerships opportunities between established business and new business entrants. No information available on number, skills base and areas of interest for aspirants. This creates uncertainty for planning purposes and the resultant negative impact on the economy.	They support the proposal.	Bill should state that expropriated property should be used only for the purpose for which it was expropriated.	No.

	Reluctance to invest further by commercial farmers is causing many business ventures to collapse. In turn the Financial sector is suffering a real and potential financial loss which may not be recoverable. Banking sector through its world class infrastructure is willing to co-operate in the implementation of measure if it is compliant with Constitution.			
SALGA	Promotion of efficiency in governance and uniformity.	They support the proposal.	Clarification of clause 12(3) concepts of abandoned land, and speculative purposes	Yes
NHTL	Benefits will be in respect of infrastructure installation in rural areas. Advocacy programmes for rural folks & their leaders	They support the proposal.	Expropriation of communal land must comply with the constitution.	Yes.
American Chamber of Commerce	Clarity of legal position in respect of expropriation of property.	They support the proposal.	Vague definition of unregistered rights. Owner not defined.	Yes.
Nedbank	Legal certainty in respect of expropriation of property.	They support the proposal.	Property beyond definition of section 25 of constitution must be provided.	No.
Eskom	Legal certainty in respect of expropriation of property. Negotiations, notifications and property investigations.	They support the proposal.	No clarity of what effect will be there if the municipality does not respond to requests to comment on an expropriation.	No.
Nedlac (in 2013)	Legal certainty in respect of expropriation of property. Negotiations, notifications and property investigations.	They support the proposal.	None	No.

b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

Issue of disagreement	Evaluation	Support	Opposition
Government officials may abuse the powers in the legislation.	The apprehension appears to be misplaced. There are sufficient checks and balances in both government policy and different legislations to keep the issue in check. Continuous rights & obligations advocacy drives should be used to get persons to know the relevant legal instruments.	Weak	Very strong
Expropriation without compensation clause is unconstitutional.	Sound legal advice has been obtained on this matter. As currently drafted this clause complies with the Constitution. Doubts expressed in this regard could be emanating from an uninformed point of view. The entire Expropriation Bill, 2019 will still be tested in the courts for its constitutional soundness once it is passed into law.	There is little support for the position.	There is strong support for the Bill.
The Bill will deter investors.	There is no empirical evidence to support this observation. Investors' interest is whether the Bill complies with the Constitution. They are also interested in a stable and safe investment environment. South Africa meets this requirement based on its strong adherence to the Rule of Law principle.	Weak support for position.	Strong support for the Bill.

2.4. Assessment of costs and benefits to stakeholders inside and outside of government

3.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
AgriSA	Expropriation for land reform purposes may require the organisation's constituency to budget for relocation and starting new farming ventures elsewhere.	Normally there are no costs involved unless through litigation.	Social cohesion and economic inclusivity.	
BASA	The Banks may have to harmonise their systems with those of government to ensure that they keep track of expropriation on mortgaged properties.	It is not envisaged that there would be compliance costs.	The constituent members will generally benefit from the increase in the mortgage book due to qualifying new entrants. In respect of land reform projects, this could be supplemented by government subsidies or grants for farming purposes thus mitigating banks' debt risk exposure.	
Landowners	Relocation costs & farming production costs.	Litigation costs where he/she opts to oppose expropriation.	Social cohesion and economic inclusivity.	
Beneficiaries	Input costs.	Administrative in nature, viz, SARS, Dept. of Labour, Dept. of Agriculture, Land Reform & Rural Development and the Department of Trade & Industry.	Social cohesion and economic inclusivity.	

3.1. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	**How will they benefit?**
Rural Communities	Infrastructure development, housing and rural development.
Urban Communities	Infrastructure development, social housing and employment creation.

List of cost bearers (groups that will bear the cost)	**How will they incur / bear the cost**
Private land owners	Loss of income due to expropriation of property.
Government	Payment of compensation, dispute adjudication, negotiations and property registrations.

2.6 Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- *The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- *The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- *To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and*

benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
AgriSA	Expropriation for land reform purposes may require the organisation's constituency to budget for relocation and starting new farming ventures elsewhere.	Normally there are no costs involved unless through litigation.	Social cohesion and economic inclusivity.	
BASA	The Banks may have to harmonise their systems with those of government to ensure that they keep track of expropriation on mortgaged properties.	It is not envisaged that there would be compliance costs.	The constituent members will generally benefit from the increase in the mortgage book due to qualifying new entrants. In respect of land reform projects, this could be supplemented by government subsidies or grants for farming purposes thus mitigating banks' debt risk exposure.	
Landowners	Relocation costs & farming production costs.	Litigation costs where he/she opts to oppose expropriation.	Social cohesion and economic inclusivity.	
Beneficiaries	Input costs.	Administrative in nature, viz, SARS, Dept. of Labour, Dept. of Agriculture, Lad Reform & Rural Development and the Department of Trade & Industry.	Social cohesion and economic inclusivity.	
AgriSA	Expropriation for land reform purposes may require the organisation's constituency to budget for relocation and starting new farming ventures elsewhere.	Normally there are no costs involved unless through litigation.	Social cohesion and economic inclusivity.	

DPWI	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Maintenance of the expropriation register, PAJA compliance.	Realisation of government service delivery objectives.	
Municipalities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs..	PAJA compliance & prescription notification subscription	Realisation of government service delivery objectives.	
Deeds Registries	Registration fee and mortgage cancellation.	PAJA compliance & prescription notification subscription	Realisation of government service delivery objectives.	
Other Expropriating Authorities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs..	PAJA compliance & prescription notification subscription	Realisation of government service delivery objectives.	

2.7 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and

b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

Department	**Budget**	**Staffing**
Agriculture, Land Reform & Rural Development.	Expropriation is a function that has been there & is catered for in the existing budgets. There may be some cost reduction where an expropriation takes place with nil compensation.	There may be a need for additional capacity due to increased workload. However, this is not an additional function.
Public Works & Infrastructure	Expropriation is a function that has been there & is catered for in the existing budgets. The requirement of an expropriation register will require a budget. There may be some cost reduction where an expropriation takes place with nil compensation.	There may be a need for additional capacity due to increased workload especially the administrative part of the expropriation register.

Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

2.8 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

For groups outside of government (add more lines if required)

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
AgriSA	Relocation & Production costs	Dialogue initiatives between government and organisation representing commercial farmers interests ongoing.
BASA	Systems upgrade and harmonisation with government IT systems to monitor expropriations on mortgaged properties.	Dialogue initiatives between government and organisation representing banks interests ongoing.
Beneficiaries	Input costs	Government has explored various subsidisation schemes.

For government agencies and institutions:

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
DPWI	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.
Municipalities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.
Other Expropriating Authorities	Payment of compensation, transfer costs, notice costs, property investigation & Conveyancing costs.	Insertion of nil compensation provision and utilise existing human resources capacity.

2.9 Managing Risk and Potential Dispute

a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.

b) Describe measures taken to manage the identified risks. Add more rows if necessary.

Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.

Identified risk	**Mitigation measures**
Non acceptance of the proposed nil compensation provision by individuals and interest groups representing property owners.	Intensify public participation in legislation making to allay unfounded fears about the proposal.
Litigation.	The proposed Land Court Bill will incorporate Alternative Dispute Resolution (ADR) to discourage costly litigation.

c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

(a) **Dispute between government departments and government agencies**

- Disputes between government agencies could arise from competing/conflicting service delivery interests.

(b) **Disputes between government agencies/parastatals and non-state actors**

- These could arise from the divergence of interests in respect of the purpose for the proposed expropriation or compensation or non-compensation for an expropriation.

(c) **Disputes between non-state actors**

- In the land reform context, these types of disputes, between landowners and claimants, could rear their head where a choice must be made between the restoration of specific dispossessed property, alternative land and/or financial compensation based on the argument of the non-feasibility of restoration of the dispossessed property.

Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.

Nature of possible dispute (from sub-section above)	**Stakeholders involved**	**Dispute-resolution mechanism**
Competing service delivery interests.		Intergovernmental Relations Framework Act, 2005 dispute resolution mechanisms.
Divergence of interests in respect of the purpose or quantum of compensation or non-compensation		Court adjudicated Alternative Dispute Resolution mechanisms – mediation, arbitration, conciliation or combination.
Land Reform context: feasibility or non feasibility of restoration of dispossessed property.		Negotiation or Court adjudicated Alternative Dispute Resolution mechanisms – mediation, arbitration, conciliation or combination.
Competing service delivery interests.		Intergovernmental Relations Framework Act, 2005 dispute resolution mechanisms.

Would it be possible to establish or use more efficient and lower-cost dispute-resolution mechanisms than those now foreseen? These mechanisms could include, for instance, internal appeals (e.g. to the Minister or a dedicated tribunal) or mediation of some kind.

Nature of possible dispute	**Proposed improvement in dispute-resolution mechanism**
Competing service delivery interests.	Consultation forums created in terms of protocols/memoranda of agreement.
Dispute arising from the purpose of expropriation or payment of non-payment of compensation	Court administered/mediated ADR process. This will ensure that disputants participate in process voluntarily and in good faith.
Land Reform context: feasibility or non feasibility of restoration of dispossessed property.	Negotiation based on a budget and time bound framework to which disputants commit in advance.
Competing service delivery interests.	Consultation forums created in terms of protocols/memoranda of agreement.

2.10 Monitoring and Evaluation

a) When is implementation expected to commence after the approval of the proposal?

- Implementation is expected as soon as the Bill is passed into law. There are already human and material resources to implement the law as this will be a continuation from the previous expropriation legislation, namely, Expropriation Act 63 of 1975

b) Describe the mechanisms that you will apply to monitor the implementation of the proposal after being approved.

- The proposed legislative measure intends to introduce an expropriation register. In terms of this approach, the record of all expropriations across the three spheres of government will be maintained. The Register will also enable government to avail information on expropriations to interested parties.
- The existing internal monitoring and evaluation reporting system will also be employed to capture performance, lessons learnt and matters for policy consideration

c) Who will be responsible for monitoring the implementation of this proposal?

- The internal monitoring and evaluation unit of the department will monitor performance in terms of this proposal in the same manner as all other programmes of the department.

d) What are the results and key indicators to be used to for monitoring? Complete the table below:

Results	**Indicators**	**Baseline**	**Target**	**Responsibility**
Impact: long term result (change emanating from the implementation of the proposal in the whole of society of parts of it)	Developments arising from property expropriation per government programme	10	10	DPWI
Outcome: medium term result (what beneficiaries achieve as a result of the implementation of the proposal)	Number of property expropriations per financial year	10	10	DPWI

e) When will this proposal be evaluated on its outcomes and what key evaluation questions will be asked? Below please find evaluation questions for your consideration:

   i. *What was the quality of proposal design/content? (Assess relevance, equity, equality, human rights)*

   ii. *How well was the proposal implemented and adapted as needed? (Utilise the Monitoring and Evaluation plan to assess effectives and efficiency)*

   iii. *Did the proposal achieve its intended results (activities, outputs and outcome) as per the Monitoring and Evaluation plan?*

   iv. *What unintended results (positive and/or negative) did the implementation of the proposal produce?*

   v. *What were the barriers and enablers that made the difference between successful and failed proposal implementation and results*

   vi. *How valuable were the results of your proposal to the intended beneficiaries?*

f) Please provide a comprehensive implementation plan

g) Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

- Notices of expropriation;
- Assessment of compensation;
- Urgent expropriations;
- Withdrawal of decision to expropriate; and
- Dispute Resolution

For the purpose of building a SEIAS body of knowledge please complete the following:

Name of Official/s	Mogoatike Johannes Lekala
Designation	Deputy Director
Unit	Property Policy & Legislative Analysis
Contact Details	(012) 406-1567
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PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
Beneficiaries	
1. Home seekers	Access to social housing
2. Emergent entrepreneurs	Access to land and subsequently business opportunities in different sectors.
3. Home seekers	Access to social housing
Cost bearers	
1. Land owners	They have to give up partial or entire land holdings.
2. Organs of state	Organs of state must avail state land for various socio-economic programmes of government
3. business sector	Provide opportunities to the previously excluded through financing.

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?
    - The risks from undesired costs may emanate mainly from litigation;
    - Commercial farmers could be the main opponents of this legislative measure simply because it seeks to level the landownership playgrounds. The disproportionate distribution and access to resources is the key reason for the current socio-economic gap dilemma facing government;
    - The lack of dexterity in programme co-ordination has been the greatest undoing which often led to duplication and a wastage of resources.

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.
    - The requirement for the maintenance of an expropriation register will inevitably require a separate budget and human resources.
    - There are also budgetary implications for the training of officials in the implementation of the legislation and for the Alternative Dispute Resolution process.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?

   - The introduction of the measure will reduce the risk and cost of litigation substantially since it will be conforming to the provisions of the Constitution,1996;
   - The proposed legislation promotes dialogue between organs of state and the party affected by an expropriation;
   - The strong position of the state bestowed by the proposed legislation is mitigated by strong checks and balances in the measure itself and the Constitution.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

Option 1.	*Ad Hoc* measures using other legislation would have to be adopted. For instance, in respect of administrative justice the relevant legislation would be applicable. In other instance the direct application of the constitutional provisions would have to be resorted to. This is currently what obtains under the Expropriation Act, 1975 regime.
Option 2.	Emphasis may have to be put on the negotiations approach. This will require a strong policy support structure to ensure consistency in the handling of cases. Negotiated expropriations could have the effect of minimising litigation.

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

   - Enhance public participation in legislation making;
   - Insert the nil compensation provision in the Expropriation Bill,2019; and
   - Introduce the court adjudicated alternative dispute resolution mechanisms through the proposed Land Court Bill.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	X	
b. Necessary to achieve the priorities of the state?	X	
c. As cost-effective as possible?	X	
d. Agreed and supported by the affected departments?	X	

9. Which of the National priorities would be most supported by this proposal?

PRIORITY 1: Economic transformation and job creation **(X)**

PRIORITY 2: Education, skills and health

PRIORITY 3: Consolidating the social wage through reliable and quality basic services

PRIORITY 4: Spatial integration, human settlements and local government (**X)**

PRIORITY 5: Social cohesion and safe communities (**X)**

PRIORITY 6: Building a capable, ethical and developmental state

PRIORITY 7: A better Africa and world.

Appendix 3:
The Constitution Eighteenth Amendment Bill, 2019 (Published).

REPUBLIC OF SOUTH AFRICA

CONSTITUTION EIGHTEENTH AMENDMENT BILL

(As introduced in the National Assembly (proposed section 74(2); initiated by the Ad Hoc Committee on the amendment of section 25 of the Constitution of the Republic of South Africa, 1996; Particulars of the proposed amendments and prior notice of introduction published in Government Gazette No. ……. of ……)

(The English text is the official text of the Bill)

_____

(*AD HOC* COMMITTEE ON THE AMENDMENT OF SECTION 25 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996)

[B ……. 20…]

GENERAL EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to provide that where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil; and to provide for matters connected therewith.

PREAMBLE

WHEREAS there is a need for urgent and accelerated land reform in order to address the injustices of the past that were inflicted on the majority of South Africans and especially as the hunger for land amongst the dispossessed is palpable and the dispossessed are of the view that very little is being done to redress the skewed land ownership pattern;

AND WHEREAS section 25 of the Constitution of the Republic of South Africa, 1996, must be amended to make explicit that which is implicit therein, so that an amount of nil compensation is explicitly stated as a legitimate option for land reform;

AND WHEREAS such an amendment will contribute to address the historic wrongs caused by the arbitrary dispossession of land;

AND WHEREAS such an amendment will further ensure equitable access to land and will further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 25 of Constitution

1. Section 25 of the Constitution of the Republic of South Africa, 1996, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

''(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court: Provided that in accordance with subsection (3A) a court may, where land and any improvements thereon are expropriated for the purposes of land reform, determine that the amount of compensation is nil.'';

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

''(3) The amount of the compensation as contemplated in subsection (2)(b), and the time and manner of any payment, must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—''; and

(c) by the insertion after subsection (3) of the following subsection:

''(3A) National legislation must, subject to subsections (2) and (3), set out specific circumstances where a court may determine that the amount of compensation is nil.''.

Short title and commencement

2. This Act is called the Constitution Eighteenth Amendment Act, 2019, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION EIGHTEENTH AMENDMENT BILL, 2019

1. INTRODUCTION

This Bill aims to amend the Constitution of the Republic of South Africa, 1996, by providing for the expropriation of land without the payment of compensation. During the Fifth Parliament, the Constitutional Review Committee was mandated by the two Houses of Parliament to solicit the views of the public on the possible review of section 25 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The review focused on allowing the state to expropriate land in the public interest without compensation, as well as on mechanisms for expropriating land without compensation. After an extensive consultation process, the Constitutional Review Committee filed a report in the two Houses recommending that:

> "Section 25 of the Constitution must be amended to make explicit that which is implicit in the Constitution, with regards to expropriation of land without compensation, as a legitimate option for land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs."

It further recommended that Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of section 25 of the Constitution. That mechanism was established by a resolution of the National Assembly first during the Fifth Parliament, and then again in the Sixth Parliament, which resulted in the development of this Bill.

2. OBJECTS OF THE BILL

The purpose of the Constitution Eighteenth Amendment Bill, 2019 ("the Bill"), is to amend section 25 of the Constitution so as to provide that the right to property may be limited in such a

way that where land is expropriated for land reform, the amount of compensation payable may be nil. Further to clarify that such limitation is a legitimate option for land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs.

3. CONTENTS OF THE BILL

3.1. Clause 1 proposes an amendment to section 25 of the Constitution to provide that where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil.

3.2. Clause 2 provides for the short title and commencement.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None

5. PARLIAMENTARY PROCEDURE

5.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 74(2) of the Constitution since its object is to amend a section within Chapter 2 of the Constitution of the Republic of South Africa, 1996.

5.2 The Committee is of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(*a*) of the Traditional Leadership and

Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.

Appendix 4:
The Constitution Eighteenth Amendment Bill, 2021 (Unpublished / Leaked).

REPUBLIC OF SOUTH AFRICA

CONSTITUTION EIGHTEENTH AMENDMENT BILL

(As introduced in the National Assembly (proposed section 74(2); initiated by the Ad Hoc Committee on the amendment of section 25 of the Constitution of the Republic of South Africa, 1996; Particulars of the proposed amendments and prior notice of introduction published in Government Gazette No. 42902 of 13 December 2019)

(The English text is the official text of the Bill)

(*AD HOC* COMMITTEE ON THE AMENDMENT OF SECTION 25 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996)

[B ……. 20…]

GENERAL EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to provide that where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil; and to provide for matters connected therewith.

PREAMBLE

WHEREAS there is a need for urgent and accelerated land reform in order to address the injustices of the past that were inflicted on the majority of South Africans and especially as the hunger for land amongst the dispossessed is palpable and the dispossessed are of the view that very little is being done to redress the skewed land ownership pattern;

AND WHEREAS section 25 of the Constitution of the Republic of South Africa, 1996, must be amended to make explicit that which is implicit therein, so that an amount of nil compensation is explicitly stated as a legitimate option for land reform;

AND WHEREAS such an amendment will contribute to address the historic wrongs caused by the arbitrary dispossession of land;

AND WHEREAS such an amendment will further ensure equitable access to land and will further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 25 of Constitution

1. Section 25 of the Constitution of the Republic of South Africa, 1996, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

''(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court: Provided that where land and any improvements thereon are expropriated for purposes of land reform as contemplated in subsection (8), the amount of compensation may be nil.'';

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

''The amount of the compensation as contemplated in subsection (2)(b), and the time and manner of any payment, must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—''; and

(c) by the insertion after subsection (3) of the following subsection:

''(3A) For the furtherance of land reform, national legislation must, subject to subsections (2) and (3), set out circumstances where the amount of compensation is nil.'';

(d) by the insertion after subsection (4) of the following subsection:

''(4A) The land is the common heritage of all citizens that the state must safeguard for future generations.'';

(e) by the substitution for subsection (5) of the following subsection:

''(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis.''.

Short title and commencement

2. This Act is called the Constitution Eighteenth Amendment Act, 2021, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION EIGHTEENTH AMENDMENT BILL, 2021

1. INTRODUCTION

This Bill aims to amend the Constitution of the Republic of South Africa, 1996 ("the Constitution"), by providing for the expropriation of land without the payment of compensation. During the Fifth Parliament, the Constitutional Review Committee was mandated by the two Houses of Parliament to solicit the views of the public on the possible review of section 25 of the Constitution. The review focused on allowing the state to expropriate land in the public interest without compensation, as well as on mechanisms for expropriating land without compensation. After an extensive consultation process, the Constitutional Review Committee filed a report in the two Houses recommending that:

> "Section 25 of the Constitution must be amended to make explicit that which is implicit in the Constitution, with regards to expropriation of land without compensation, as a legitimate option for land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs."

It further recommended that Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of section 25 of the Constitution. That mechanism was established by a resolution of the National Assembly first during the Fifth Parliament, and then again in the Sixth Parliament, which resulted in the development of this Bill.

2. OBJECTS OF THE BILL

The purpose of the Constitution Eighteenth Amendment Bill, 2019 ("the Bill"), is to amend section 25 of the Constitution so as to provide that the right to property may be limited in such a

way that where land is expropriated for land reform, the amount of compensation payable may be nil. Further to clarify that such limitation is a legitimate option for land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs.

3. CONTENTS OF THE BILL

3.1. Clause 1 proposes an amendment to section 25 of the Constitution to provide—

3.1.1 that where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil;

3.1.2 for national legislation to provide circumstances where the amount of compensation is nil;

3.1.3. for the insertion after subsection (4) of a new subsection (4A) in order to require the state to safeguard land, which is the common heritage of all citizens, to be safeguarded;

3.1.4.for the substitution of subsection (5) to add that the state must take reasonable legislative and other measures to enable state custodianship of certain land in order for citizens to gain access to land on an equitable basis; and

3.2. Clause 2 provides for the short title and commencement.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None

5. PARLIAMENTARY PROCEDURE

5.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 74(2) of the Constitution since its object is to amend a section within Chapter 2 of the Constitution of the Republic of South Africa, 1996.

5.2 The Committee is of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(*a*) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.