

COURT ONLINE COVER PAGE

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO: 2025-016193

In the matter between:

DEMOCRATIC ALLIANCE

Plaintiff / Applicant / Appellant

and

**MINISTER OF PUBLIC WORKS AND
INFRASTRUCTURE, PRESIDENT OF THE
REPUBLIC OF SOUTH
AFRICA, CHAIRPERSON OF THE
NATIONAL COUNCIL OF
PROVINCES, SPEAKER OF THE
NATIONAL ASSEMBLY, SPEAKER OF
THE LIMPOPO PROVINCIAL
LEGISLATURE, SPEAKER OF THE
EASTERN CAPE PROVINCIAL
LEGISLATURE, SPEAKER OF THE
GAUTENG PROVINCIAL
LEGISLATURE, SPEAKER OF THE
NORTH WEST PROVINCIAL
LEGISLATURE, SPEAKER OF THE
KWAZULU NATAL PROVINCIAL
LEGISLATURE, SPEAKER OF THE FREE
STATE PROVINCIAL
LEGISLATURE, SPEAKER OF THE
MPUMALANGA PROVINCIAL
LEGISLATURE, SPEAKER OF THE
WESTERN CAPE PROVINCIAL
LEGISLATURE, SPEAKER OF THE
NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Defendant / Respondent



Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 7/2/2025 at 7:04:37 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED
BY:

**Registrar of The High Court,
Western Cape Division, Cape
Town**

A handwritten signature in black ink, appearing to be a stylized name, located at the bottom right of the page.

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

**SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE**

Fifth Respondent

**SPEAKER OF THE MPUMALANGA PROVINCIAL
LEGISLATURE**

Sixth Respondent

**SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE**

Seventh Respondent

**SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE**

Eighth Respondent

**SPEAKER OF THE KWAZULU NATAL PROVINCIAL
LEGISLATURE**

Ninth Respondent

**SPEAKER OF THE FREE STATE PROVINCIAL
LEGISLATURE**

Tenth Respondent

**SPEAKER OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE**

Eleventh Respondent



**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicants intend to apply on a date to be determined by the Registrar for an order in the following terms:



1. The following final mandates are declared to be inconsistent with the Constitution of the Republic of South Africa, 1996 and invalid, and reviewed and set aside:
 - 1.1. The final mandate dated 12 March 2024 from the Limpopo Provincial Legislature.
 - 1.2. The final mandate dated 7 March 2024 from the Eastern Cape Provincial Legislature.
 - 1.3. The final mandate dated 11 March 2024 from the Gauteng Provincial Legislature.

- 1.4. The final mandate dated 12 March 2024 from the Mpumalanga Provincial Legislature.
- 1.5. The final mandate dated 12 March 2024 from the Northern Cape Provincial Legislature.
2. The Expropriation Act 13 of 2024 (**Expropriation Act**) is declared to be inconsistent with the Constitution of the Republic of South Africa, 1996 and invalid.
3. To the extent necessary, the following rules of provincial legislatures are declared to be inconsistent with the Constitution of the Republic of South Africa, 1996 and invalid, and reviewed and set aside:
- 3.1. Rule 236 of the Limpopo Provincial Legislature Standing Rules and Orders of 28 February 2017.
- 3.2. Rule 40(5) and 41(6) of the Eastern Cape Provincial Legislature Standing Rules, Second Edition for the Sixth Term.
- 3.3. Rule 36(1) and (2) of the Gauteng Legislature Standing Rules of 27 November 2018.
- 3.4. Rule 201(6) and (7) of the Mpumalanga Provincial Legislature 2020 Edition.



4. Alternatively to the relief sought in paragraphs 1 to 3, section 19(2), (3), and (4) of the Expropriation Act is declared as inconsistent with the Constitution and invalid to the extent that it requires parties to approach a Court “within 180 days of the date of the notice of expropriation”.
5. The costs of this application are payable by any respondent who opposes this application, such costs to include the costs of two counsel on Scale C.

TAKE NOTICE FURTHER that the accompanying affidavit of **HELEN ZILLO** will be used in support of the application.



TAKE NOTICE FURTHER that the applicant has appointed the addresses of its attorneys of record as the addresses at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required:

- (a) to notify applicant's attorney in writing within **5 (FIVE)** days of receipt of this application and in such notification appoint an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.; and
- (b) within **15 (FIFTEEN)** days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any.

DATED AT CAPE TOWN ON THIS 5TH DAY FEBRUARY 2025



MINDE SCHAPIRO AND SMITH INC.
Per: Elzanne Jonker/ks

Applicant's attorneys

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TO THE REGISTRAR OF THE ABOVE COURT

AND TO: MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

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AND TO: PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

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AND TO: CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES

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AND TO: SPEAKER OF THE NATIONAL ASSEMBLY

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bloots@parliament.gov.za
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AND TO: SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE

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AND TO: SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE

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AND TO: SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE

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AND TO: SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE

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AND TO: SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE

Tenth Respondent

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Bloemfontein

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cecawood@gmail.com ; delangejeanne@gmail.com

AND TO: SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE

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AND TO: SPEAKER OF THE WESTERN CAPE PROVINCIAL LEGISLATURE

Twelfth Respondent

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C/O: **STATE ATTORNEY, CAPE TOWN**

4th Floor, 22 Long Street

Cape Town

Email: LManuel@justice.gov.za ; pmelapi@justice.co.za



AND TO: SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE

Thirteenth Respondent

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Kimberley

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Kimberley

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kvictor@ncpg.gov.za ; NGcilitshana@justice.gov.za

**IN THE HIGH COURT OF SOUTH AFRICA
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CASE NO:

In the matter between:

DEMOCRATIC ALLIANCE

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And

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Third Respondent



SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

**SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE**

Fifth Respondent

**SPEAKER OF THE EASTERN CAPE PROVINCIAL
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Sixth Respondent

**SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE**

Seventh Respondent

**SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE**

Eighth Respondent

**SPEAKER OF THE KWAZULU NATAL PROVINCIAL
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Ninth Respondent

**SPEAKER OF THE FREE STATE PROVINCIAL
LEGISLATURE**

Tenth Respondent

**SPEAKER OF THE MPUMALANGA PROVINCIAL
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Eleventh Respondent


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**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HELEN ZILLE



swear that:

1. I am an adult female. I am the Chairperson of the Federal Council of the Democratic Alliance (DA). I am authorised to bring this application on behalf of the DA.
2. The facts in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct. Where I make averments not directly within my knowledge, I do so on the basis of information made available to me or which has been ascertained from the persons whose names I disclose. I believe such information to be true and correct. Legal submissions are made on the advice of the DA's legal representatives.

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I INTRODUCTION

3. On 20 December 2024, the President of the Republic of South Africa assented to the Expropriation Act 13 of 2024 (**Expropriation Act** or **Act**). The Act was promulgated in *Government Gazette* 51964 dated 24 January 2025.

4. The Expropriation Act is unconstitutional. This application is a very narrow challenge to the unconstitutionality of the Expropriation Act as a whole, alternatively certain of its provisions.

5. First, the Act was passed by Parliament contrary to section 65(2) of the Constitution and the Mandating Procedures of Provinces Act 52 of 2008 (**Mandating Act**). Of the seven provincial delegations that voted in favour of the Expropriation Bill in the National Council of Provinces, *four* had no authority to do so. They voted in terms of final mandates that were issued contrary to the Constitution. This renders the Act unconstitutional in its entirety.



6. Second, section 19(2) and (3) of the Act is irrational. The provision contains an absurdity relating to the period by which a disputed expropriation can be resolved by a court. This absurdity renders the entire Act inoperable. The Act must accordingly be declared invalid in its entirety. Alternatively, section 19(2) and (3) should be declared invalid to the extent of its inconsistency with the Constitution.

II THE PARTIES

7. The first applicant is the DA, a registered political party. The DA brings this application in its own interests, in its members' interests, and in the public interest.

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8. The first respondent is the **MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE**. He is the Minister responsible for the administration of the Expropriation Act.
9. The second respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**. The President assented to the Act. He is cited in his capacity as head of the executive.
10. The third respondent is the **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**. The Chairperson is cited for any interest she may have in this matter, given that the DA impugns the legality of Act based on the proceedings before the NCOP.
11. The fourth respondent is the **SPEAKER OF THE NATIONAL ASSEMBLY**. She is cited for any interest she may have in this matter.
12. The fifth to thirteenth respondents are the various Speakers of the provincial legislatures.
- 12.1. The DA cites the Speakers of the Limpopo, Eastern Cape, Gauteng, Northern Cape and Mpumalanga provincial legislatures since the DA impugns the final mandates purportedly conferred by these legislatures to their delegations at the NCOP, or the rules in terms of which the provincial legislatures conferred the final mandates.
- 12.2. The DA cites the Speakers of the remaining provincial legislatures for any interest they might have in this matter.



III THE UNLAWFUL MANDATES

13. The DA's first ground for challenging the Expropriation Act concerns the legality of the final mandates authorising delegates to vote for the Expropriation Bill at the NCOP. In this section, I discuss the legal principles governing provincial delegations' authority to vote in the NCOP. I then demonstrate that a material number of delegations lacked the authority to vote in favour of the Expropriation Bill at the NCOP.

(a) The principles of the Mandating Act

14. The failure to comply with constitutional manner and form requirements in enacting legislation renders legislation invalid. If the constitutional conditions for the law-making processes have not been complied with, then this Court has a duty to say so and declare the resulting statute invalid.



15. One of these conditions for the law-making process is the authority of provincial delegates in the NCOP. Provincial delegates, when casting their votes on behalf of provinces in the NCOP, must be authorised by their provincial legislatures to vote either against or for a bill.

16. The Constitution and the Mandating Act regulate this authority. Section 65(2) of the Constitution requires an Act of Parliament to "provide for a *uniform* procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf" (emphasis added). The Mandating Act is the legislation envisaged in section 65(2).

17. The Mandating Act prescribes a uniform, threefold process for conferring authority on delegations to the NCOP.

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17.1. First, *negotiating mandates*. Provincial legislatures—through a designated committee—must confer authority on their provincial delegation “parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling and before consideration of final mandates, and may include proposed amendments to the Bill” (section 5).

17.2. Second, *final mandates*. A provincial legislature (not a designated committee) “must confer authority on its provincial delegation to the NCOP to cast a vote when the relevant NCOP select committee considers a Bill prior to voting thereon in an NCOP plenary” (section 6).



17.3. Third, *voting mandates*. A provincial legislature (again, not a designated committee) “must confer the authority on the head of the provincial delegation to the NCOP, or a delegate designated by the head of the delegation, to cast a vote in an NCOP plenary” (section 8(1)).

18. Two important principles arise from this uniform process.

19. First, only a *provincial legislature* may confer final and voting mandates. Committees, on the other hand, may confer negotiating mandates.

19.1. There is good reason for this. The NCOP is a forum for expressing the interests of the provinces in the national legislative process. If provincial legislatures do not decide whether to confer final mandates, and instead another person or body takes that decision, then it

denudes provinces of their powers in law and presents a significant risk that the true interests of the province are not represented at the NCOP. The representative and elected plenary body of a provincial legislature should be the *only* body to decide how a delegate votes at the NCOP.

19.2. Section 3(b) supports this interpretation. Section 3(b) requires a final mandate to indicate “whether the provincial legislature votes in favour of or against, or abstains from voting on, the Bill”. Only a provincial legislature sitting in plenary can “vote” in favour or against a Bill.



19.3. In addition to the plain language of sections 3(b), 6 and 8(1), schedule 2 to the Mandating Act makes it clear that only provincial legislatures may confer a final mandate in a plenary session. Schedule 2 prescribes the format for a final mandate. All final mandates must comply with this format (section 3(e)). The format requires the provincial legislature to indicate the “date of deliberation” and the “vote of the legislature” on a final mandate. The reference, patently, is to a deliberative sitting of a legislature’s plenary body.

20. Second, final mandates *may* become voting mandates “[i]f no matter arises from the deliberations of the NCOP select committee when considering final mandates which may necessitate consideration by a provincial legislature” (section 8(2)). Critically, if deliberations in the NCOP select committee raise matters requiring consideration by the provincial legislature, then the provincial legislature is required to issue a voting mandate to its head

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delegate. This voting mandate may *differ* to the final mandate. A provincial legislature may *change its mind* between the final and voting mandates—and after seeing all other final mandates—depending on the deliberation of final mandates in the NCOP select committee.

21. The possibility for a change between final and voting mandates is why *all* final mandates need to be authorised by provincial legislatures. Provincial legislatures may be swayed or influenced by the number of other final mandates in favour or against a bill, or final mandates from a particular province. A provincial legislature may consider changing its final mandate and issue a different voting mandate once it sees all other final mandates. **if it turns**



out that even one delegation had *no authority* and an *invalid* final mandate, and participated in the NCOP select committee on the strength of that unlawful final mandate, then there is no telling—

21.1. how the other delegates (and provincial legislatures) would have voted had they known that the delegation had an unlawful mandate; and

21.2. how the delegation would have voted had it had a lawful mandate (and the consequences of that lawful vote on the other delegations).

22. Thus, one cannot presuppose that a single unlawful final mandate would have “made no difference”.

23. There is an important constitutional rationale behind requiring *all* delegations to have lawful final mandates. The NCOP is a forum for expressing the interests of the provinces in the national legislative process. If delegations to the NCOP can cast votes without having any authority to do so, then that

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severely undermines the NCOP's purpose. It allows legislation to be passed not only with the wholesale exclusion of a province's interest, but also with all other delegations mistakenly believing that all provinces' interests are represented.

24. In any event, section 65(1)(b) of the Constitution requires at least five provinces to vote in favour of a bill for the NCOP to pass legislation. If there are fewer than five lawful final or voting mandates in support of a bill when the NCOP passes that bill, then the resultant legislation would be unconstitutional.



(b) The unlawful final mandates

25. On 13 March 2024, the NCOP select committee responsible for the Expropriation Bill deliberated and cast votes on the Bill in terms of delegations' final mandates.
26. On 18 March 2024, seven provinces voted in favour of the Expropriation Bill in a NCOP plenary session. One province (the Western Cape) voted against the Bill, and one province (the North West) was not present.
27. However, five of the seven provincial delegations that voted in favour of the Expropriation Bill had unlawful final mandates. In the result, only *two* provincial delegations lawfully voted in favour of the Bill—failing to meet the required *five* valid votes contemplated in section 65(1)(b) of the Constitution.
28. The five unlawful final mandates were from the Limpopo, Eastern Cape, Northern Cape, Gauteng, and Mpumalanga provincial legislatures. Each of these final mandates were inconsistent with the Constitution for the same

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reason: the provincial legislatures did not confer the final mandate during a plenary session. Instead, the *Speakers* of those legislatures decided to confer the mandates.

29. First, in the Limpopo Provincial Legislature (LPL):

29.1. On 12 March 2024, the LPL apparently issued its delegation a final mandate to vote in favour of the Expropriation Bill. I attach its mandate as **FA1**.

29.2. The mandate is signed by the Speaker and purports to represent to the NCOP that the Limpopo delegate had been authorised by the "province" to vote in favour of the Expropriation Bill. The mandate records the LPL's "date of deliberation" as 12 March 2024.

29.3. However, the LPL never voted to confer a final mandate on the provincial delegation. The LPL never met as a plenary body to debate and vote on the final or voting mandates. There were no "deliberations", as suggested by the final mandate. Instead, the Speaker, on his own, decided to confer the final mandate (which became the voting mandate) on the LPL delegation.

29.4. I refer to the affidavit of Evelyn Lindy Wilson, a member of the LPL, who confirms the above.

30. Second, in the Eastern Cape Provincial Legislature (ECPL):



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30.1. On 7 March 2024, the ECPL apparently issued its delegation a final mandate to vote in favour of the Expropriation Bill. I attach its mandate as **FA2**.

30.2. The mandate is signed by the Speaker and purports to represent to the NCOP that the ECPL delegate had been authorised by “the province” to vote in favour of the Expropriation Bill. The mandate records the ECPL’s “date of deliberation” as 7 March 2024.

30.3. But the ECPL never voted to confer a final mandate on the provincial delegation. The ECPL never met as a plenary body to debate and vote on the final or voting mandates. There were no “deliberations”, as suggested by the final mandate. Instead, the Speaker, on her own, decided to confer the final mandate (which became the voting mandate) on the ECPL delegation.



30.4. I refer to the affidavit of Horatio Hendricks, a member of the ECPL, who confirms the above.

31. Third, in the Northern Cape Provincial Legislature (**NCPL**):

31.1. The Speaker signed an undated final mandate supporting the Expropriation Bill (**FA3**). The mandate records that the NCPL delegate had been authorised by “the province” to vote. The mandate records the NCPL’s “date of deliberation” as 12 March 2024.

31.2. But the NCPL never voted to confer a final mandate on the provincial delegation. The NCPL never met as a plenary body to debate and

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vote on the final or voting mandates. There were no “deliberations”, as suggested by the final mandate. Instead, the Speaker, on her own, decided to confer the final mandate (which became the voting mandate) on the NCPL delegation.

31.3. I refer to the affidavit of Harold Mcgluwa, a member of the NCPL, who confirms the above. I also attach the Hansard of the NCPL’s session of 12 March 2024—the date on which the final mandate records the NCPL deliberated on the mandate (**FA3A**). The Hansard reveals that the NCPL did not deliberate or consider the final mandate on that date.



32. Fourth, as for Gauteng, the Speaker of the Gauteng Provincial Legislature (**GPL**) conferred a final mandate on the GPL delegation. The Speaker did so on 11 March 2024 (**FA4**). There was no plenary session at the GPL to confer a final mandate, despite the mandate recording a “date of deliberation” and that the GPL supports the Bill. The Speaker conferred the final mandate unilaterally. I refer to the affidavit of Mike Moriarty, a member of the GPL, who confirms this.

33. Fifth, in Mpumalanga’s case, on 12 March 2024, the Speaker of the Mpumalanga Provincial Legislature (**MPL**) conferred a final mandate on the Mpumalanga delegation to vote in favour of the Expropriation Bill (**FA5**). It records a “date of deliberation” of 12 March 2024. However, there was no deliberation on that day. The Speaker conferred the final mandate, not the House.

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34. In each of the above cases, the provincial delegation cast a vote in terms of their final mandate at the NCOP's select committee meeting on 13 March 2024 and the NCOP's plenary session on 18 March 2024.
35. Each of these final mandates violate the first principle of the Mandating Act discussed above, which stems from section 65(2) of the Constitution. Only *provincial legislatures*—sitting in plenary—may confer final mandates. Speakers of provincial legislatures cannot confer final mandates. Accordingly, the final mandates are unlawful and unconstitutional.
36. As I explained above, even if *one* of the above final mandates was unlawful, the Expropriation Bill would have been passed unconstitutionally. But in this case, *five* final mandates at the NCOP select committee were conferred unlawfully. The effect is that only *two* provinces validly voted for the Expropriation Bill, short of the constitutional requirement of *five*.



(c) The rules of the provincial legislatures

37. The respondents might invoke the relevant provisions of the provincial legislatures' rules to defend the constitutionality of the final mandates.
38. The fundamental difficulty with this approach is that provincial legislature rules that permit the passing of legislation contrary to the Constitution and national legislation do not somehow validate unconstitutional legislation. The Constitution and the Mandating Act require provincial legislatures to confer final and voting mandates. It makes no difference if a provincial legislature's rule permits another body, like the Speaker, to confer a final mandate. If the final mandate was conferred contrary to the Constitution or the Mandating Act,

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then it must be declared invalid, regardless of the content of any provincial legislature's rule.

39. There are two additional issues with invoking the rules.

39.1. First, the impugned final mandates were all conferred contrary to the rules.

39.2. Second, the DA has challenged the constitutionality of the rules, to the extent necessary.



(i) The final mandates were contrary to the legislatures' rules

40. Even if compliance with legislatures' rules rendered the final mandates constitutional, the final mandates in this matter were conferred *contrary* to the provincial legislatures' rules.

41. *Limpopo*. Rule 234(3) of the LPL's Standing Rules and Orders of 28 February 2017 (**LPL Rules**) provides that "in the case of a matter on which the province's delegation will be expected to vote in the NCOP, the House *must* by resolution confer authority to vote on the delegation". Rule 236 of the LPL's Rules permits the LPL's Speaker to confer a final mandate—but "[m]andates conferred by the Speaker when the House is not in session must be ratified by resolution of the House in its next sitting". The LPL failed to comply with this requirement. It never ratified the final mandate at its next sitting (or ever).

42. *Eastern Cape*. Rules 40(1) to (3) and 41(1) to (5) of the Standing Rules of the Eastern Cape Provincial Legislature, Second Edition for the Sixth Term (**ECPL Rules**) provide that the House must deliberate on and vote to confer a final

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and voting mandate. Rules 40(5) and 41(6) of the ECPL Rules permit the Speaker to confer a final and voting mandate, subject to two conditions: she must do so after consultation with the political parties in the ECPL and the mandate “must” be ratified by the House “at the first available opportunity”. The Speaker did not comply with these two conditions. The ECPL never ratified the final mandate at its next sitting (or ever). The Speaker never consulted with the political parties in the ECPL before conferring the final mandate.

43. *Northern Cape*. The Northern Cape Provincial Legislature Standing Rules of 5 October 2020 (**NCPL Rules**) make *no* provision for the Speaker to confer a final mandate. Rule 225(4) provides that the House must confer a final mandate, and Rule 241 provides that voting in the NCOP must take place as prescribed by the Mandating Act.
44. *Gauteng*. Rule 248 of the Gauteng Legislature Standing Rules of 27 November 2018 (**GPL Rules**) provides that the *Legislature* must confer a final mandate—not the Speaker. Rule 36(1) of the GPL Rules provides that the Speaker, when the House is in recess, may “settle” a final mandate “in consultation with the leaders of political parties”. But in this case, the Speaker, when she decided to issue the GPL final mandate, failed to comply with rule 36(1). She did not consult with the leaders of the political parties in the GPL before “settling” the final mandate.
45. It gets worse. Rule 36(2) of the GPL provides that if there is an absence of consensus among political leaders regarding a final mandate, then the final



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mandate “must be dealt with by the House Sitting”. The DA had opposed the Expropriation Bill in the GPL. For instance, on 14 March 2024, the DA submitted a minority report in the GPL’s Infrastructure Development Portfolio Committee when the Committee decided to support the Bill (FA6). So, not only did the Speaker fail to consult with political leaders, but if she had, then there would have been dissensus, and the House would have had to issue the final mandate.

46. The Speaker and certain members in the GPL apparently recognised that the Speaker had breached the Rules. In an attempt to cure the illegality, **26 March 2024**, after the NCOP passed the Expropriation Bill, the Portfolio Committee Chair tabled the Speaker’s final mandate before the House via a motion without notice. The Chair summarily introduced the Committee’ report on the Expropriation Bill and the Final Mandate in a House meeting dealing with questions to the Executive and quarterly reports. It was a desperate attempt to “ratify” the Speaker’s final mandate.
47. This “ratification” cannot save the final mandate. The Speaker breached the requirement in Rule 36(1) regarding consultation; and the Speaker could not have issued the mandate because there was dissensus among political parties. While Rule 36(3) provides the House with a power to ratify mandates “settled” by the Speaker, that power only arises when the Speaker settles a mandate “in terms of this Rule”. She did not do so, for want of consultation and consensus. It follows that her final mandate could not be ratified.



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48. *Mpumalanga*. Rule 201(6) of the Mpumalanga Provincial Legislature 2020 Edition (**MPL Rules**) provides that "if the Legislature is not sitting when a final or voting mandate is required the Speaker may confer such mandate as *recommended by the committee*" (emphasis added). As Harold Trudie Maria Johanna Grove-Morgan confirms in her affidavit, the MPL's committee responsible for the Expropriation Bill did not recommend a final mandate to the Speaker. The Speaker unilaterally conferred the mandate.

49. Additionally, rule 201(7) of the MPL Rules requires the MPL to ratify any mandate conferred by the Speaker in terms of rule 201(6). The MPL failed to comply with this requirement too.



49.1. On 17 March 2024, *after* the NCOP passed the Expropriation Bill, at a plenary session of the MPL, the Speaker purported to table the final mandate for ratification. However, as the video of the proceedings demonstrates, the MPL *never voted to approve* the final mandate. The Speaker just mentions that various reports have been tabled; but the Speaker never puts the mandate to a vote, and the mandate is never ratified by a vote. The video is available at <https://www.youtube.com/watch?v=zYagwjlJ4ec> and the relevant time segment is from 3:21:01. Since there was no vote—and certainly no deliberation on the final mandate—it cannot be said to have been ratified by the MPL.

49.2. Even if the MPL voted to ratify the final mandate on 17 March 2024, it lacked the power to do so under its Rules. As in Gauteng, the House could not ratify a final mandate passed contrary to its rules.

50. Accordingly, the five final mandates were conferred contrary to the legislatures' rules.

(ii) The rules are unconstitutional

51. The DA's primary submission is that the rules cannot validate a final mandate conferred contrary to the Constitution and Mandating Act. That submission, if it finds favour with this Court, ought to be dispositive of the matter. However, to the extent that it does not, the DA has, to the extent necessary, challenged the relevant rules in its notice of motion.



52. The DA attaches the relevant extract of the rules to this affidavit as **FA7** to **FA11**.

53. The rules are unconstitutional to the extent that they empower the Speaker to confer final mandates. The rules unlawfully delegate to the Speaker the power to confer a final or voting mandate.

54. The delegation in the respective rules cannot be saved by the consultation and ratification requirements in those rules.

54.1. The ECPL and GPL rules require the Speaker to issue a final mandate only "*after* consultation with" the leaders of the political parties (the LPL Rules do not impose this requirement at all). Importantly, the decision ultimately remains that of the Speaker's. She must consider the views

of political leaders, but she is not bound by them. The delegation is thus total and unfettered in that sense.

54.2. Ratification by the House is cold comfort. Ratification occurs *after* the NCOP passes a bill (if it occurs before, then there is no “ratification”, but an issuing of a final or voting mandate by the House). But after the NCOP passes a bill, there is nothing the House can do. If it votes against ratifying the Speaker’s final mandate, a provincial legislature cannot undo the passing of the legislation. Ratification serves no purpose with respect to the lawmaking process.



55. So, the LPL, ECPL, and GPL Rules are unconstitutional to the extent that they delegate to the Speaker the power to confer a final or voting mandate.

56. Rule 201(6) and (7) of the MPL Rules is similarly unconstitutional.

56.1. Rule 201(6) provides: “if the Legislature is not sitting when a final or voting mandate is required the Speaker may confer such mandate as recommended by the committee”. Rule 201(7) then provides: “the Legislature must ratify the Speaker’s conferral of the mandate at the sitting of the House”.

56.2. In the first place, rule 201(6) provides the Speaker with a discretion (“may”) to confer a final or voting mandate—regardless of a committee’s recommendation. So, the Speaker, despite being obliged to consider the committee’s recommendation, ultimately takes the decision to confer a final mandate.

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56.3. Alternatively, it may be that the Speaker has a power coupled with a duty to confer a final mandate “as recommended by the committee”. However, even on this interpretation, rule 201(6) is unconstitutional. Sections 6 and 8(1) of the Mandating Act deliberately refer to the “provincial legislature” conferring a final or voting mandate. In contradistinction, in section 5, a “committee” confers a negotiating mandate. So, committees cannot confer final or voting mandates. They can confer only negotiating mandates, while final or voting mandates are only for plenary bodies to confer.



57. The LPL, ECPL, GPL, and MPL Rules are accordingly unlawful and unconstitutional. A provincial legislature—sitting as a plenary body—must confer a final or voting mandate. Not a Speaker acting alone, and not a committee.

58. In turn, the final mandates issued under those provincial legislature rules (assuming the mandates complied with the rules) are unlawful and unconstitutional. The final mandates cannot be saved by the unconstitutional rules.

(d) Conclusion on the final mandates

59. The DA’s primary submission is that of the seven provinces that voted for the Expropriation Bill in the NCOP, only *two* validly voted. The NCOP did not have the *five* required votes to pass the Bill, because five final mandates were conferred contrary to the Constitution and the Mandating Act. The mandates were conferred by the Speaker—not the provincial legislature.

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60. But the DA does not need to come home on all five final mandates. Even if only *one* of the final mandates were bad in law, the effect that this illegality may have had on the other delegates cannot be known. There is just no telling whether, had the provincial legislature acted lawfully, the outcome in the NCOP would have been the same. So, even if one final mandate was unlawful, the conditions for lawmaking were not met. The Expropriation Act is unconstitutional, in its entirety, for that reason.

IV THE IRRATIONALITY IN SECTION 19

61. The DA's second ground for challenging the Expropriation Act is the irrationality of section 19. This irrationality renders the entire Act inoperable, alternatively, at the very least, renders section 19 invalid to the extent of its inconsistency with the Constitution.

62. In this Part, I provide an overview of the Expropriation Act, then I address the irrationality in section 19.

(a) An overview of the Expropriation Act

63. The Expropriation Act's purpose is to enable expropriation in accordance with the Constitution. Its preamble expressly records that all expropriation must accord with the constitutional rights to property (section 25), fair administrative action (section 33), and access to courts (section 34). Echoing section 25(1) and (2) of the Constitution, section 2(1) of the Act prohibits the expropriation of property arbitrarily or for a purpose other than a public purpose.

64. The Act empowers the Minister to expropriate property for a public purpose or in the public interest. The Act envisages that other organs of state may be



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empowered under other legislation to expropriate property. The Minister may also expropriate property on behalf of an organ of state that lacks the power to expropriate.

65. In section 9, the Act spells out the effect of expropriation. Expropriation implies a vesting of ownership of the property in the expropriating authority (or in the person on whose behalf the property was expropriated). As a default, unregistered rights in the property are also expropriated when a property is expropriated. The expropriating authority may take possession of the property after expropriation.



66. In section 12, the Act regulates compensation for expropriation. The Act requires compensation to be just and equitable, having regard to all relevant circumstances. The Act provides that "nil compensation" for expropriation may be just and equitable depending on all relevant circumstances, including:

- "(a) 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;*
- (b) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;*
- (c) notwithstanding registration of ownership in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), where an owner has abandoned the land by failing to exercise control over it despite being reasonably capable of doing so;*
- (d) 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."*

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67. The Act prescribes two steps before an expropriating authority can decide to expropriate.
68. First, the expropriating authority must consider all relevant circumstances and consult with certain stakeholders. The authority must ascertain certain facts, including the suitability of the property for the required purpose. The expropriating authority is empowered to conduct various investigations on land that might be expropriated, including valuing the land, subject to the landowner's consent or a court order. The authority is obliged to obtain the particulars of all those who may hold rights over the property. The authority must also consult with various entities, including the departments responsible for rural development and environmental affairs. The authority must also consult with the relevant municipality.
69. Second, if an authority intends to expropriate property, then it must serve and publish a notice of intention to expropriate (**notice of intention**). The notice must include various details relating to the property and the authority. Most importantly, the notice of intention must include "an offer of compensation which the expropriating authority considers just and equitable and an explanation of how the amount was arrived at with reference to supporting information".
70. Under section 7(4)(a), an owner of a property has three options in response to a notice of intention. They may: accept the offer of compensation, request



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further particulars about the offer of compensation (under section 14), or dispute the amount of compensation offered.

71. If the owner accepts the offer of compensation, then the authority may decide to expropriate the property. In terms of section 8, the authority must then serve and publish a **notice of expropriation** within a reasonable time. The notice must include various information. The notice of expropriation “must contain” the compensation agreed upon. The date of expropriation may not be before the date of service of the notice of expropriation (section 9(1)(e)).



72. If the owner rejects the offer of compensation in the notice of intention, then the owner is a “disputing party” as defined in section 1 of the Act. The authority cannot proceed to expropriate without more. Under section 7(6)(a), echoing section 25(2)(b) of the Constitution, the expropriating authority may only decide to expropriate the property, in the case of disagreement with the owner, after a court approves the compensation for the expropriation.

(b) The absurdity and irrationality

73. It is trite that all laws must be rational and be written in a clear and accessible manner. The law must indicate with reasonable certainty to those who are bound by it what is required of them so that they may regulate their conduct accordingly. This is required by the Rule of Law. Yet, sections 19(2), (3), and (4) of the Act do not comply with this basic threshold.

74. A “notice of expropriation” is defined in section 1 to mean a notice contemplated in section 8.

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75. Section 19 regulates the determination by a court of compensation. In terms of section 19(2), if the authority and the disputing party cannot settle their dispute, then either party may approach a court “for the court to decide or approve the amount, time and manner of payment of just and equitable compensation”.
76. Section 19(2) requires the authority or the disputing party to approach a court “within 180 days of the date of the **notice of expropriation**” (emphasis added). Section 19(2) purports to impose a time limit for when parties to a ~~disputed~~ expropriation must approach a court for determination of compensation.
77. There is a legitimate purpose for imposing such a time limit. Intended and disputed expropriations should not linger over properties. An intention to expropriate will invariably impact on a property’s value and use. Owners may not be able to sell or otherwise utilise their properties if government has issued an intention notice. At the same time, government may have an interest in knowing that an expropriation process has ended after negotiations failed with the owner. Expropriations, certainly when disputed, should thus be resolved expediently to avoid paralysing the use of property and undermining government interests.
78. The principle of a time limit and the procedure to be adopted in terms of which that time limit is to be exercised are therefore necessary. That, the DA has no difficulty with. Rather, the DA’s challenge is founded on the absurdity and irrationality of the time limit in section 19(2) of the Act .
79. The irrationality and attendant confusion arises from the following:



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79.1. In terms of section 8(3)(g) of the Act a notice of expropriation must include, inter alia, "subject to section 20, the amount of compensation agreed upon or approved or decided by a court under section 19". This contemplates that a notice of expropriation may only be issued after a determination has been made by a court pursuant to section 19.

79.2. But, section 19(2) contemplates a Court process within 180 days from the notice of expropriation. This contemplates a Court process after the notice of expropriation. It provides: "If the expropriating authority and disputing party do not settle the dispute by consensus or mediation, either party may, within 180 days of the date of the notice of expropriation, institute proceedings in a competent court for the court to decide or approve the amount, time and manner of payment of just and equitable compensation."



80. Simply put, an authority cannot issue a notice of expropriation until they have decided to expropriate. An authority cannot decide to expropriate until (where there is a dispute) a court approves the compensation. Notice of expropriation (in cases of disputed expropriation) can thus only be served *after* a court determines the compensation.

81. So, it is absurd to require parties to approach a court for the determination of compensation within 180 days of the notice of expropriation. The 180-day period after the service of a notice of expropriation will *never* commence *before* a party approaches a court.

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82. Conversely stated, a party cannot approach a court to determine compensation *after* a notice of expropriation. A notice of expropriation implies that a court has already determined the compensation for that disputed expropriation. But section 19(2) envisages parties approaching a court *after* the notice of expropriation.
83. Section 19(2) fails to achieve its purpose. It ties the limitation period of 180 days to approach a court to an event that can only ever occur *after* a court has determined compensation. It is absurd and irrational. It is unconstitutional for this reason alone.
84. With an effective limitation period, the state and property owners enjoy certainty over when a disputed expropriation prescribes or ends. Either party, should they wish, can do nothing if they reach an impasse in negotiations, knowing that the expropriation will die a natural death. However, section 19(2)'s absurdity means that expropriations will linger over properties unless the property owner or state approach a court.
85. Accordingly, the absurdity in section 19(2) is not benign. It is serious and it impacts on rights.
- 85.1. Not having a clear, rational limitation period for disputed expropriations limits the right in section 25(1) of the Constitution against arbitrary deprivations of property. If the *process* of expropriation includes an arbitrary and irrational time limitation period, then any resultant deprivation of property is arbitrary too.



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85.2. The right in section 33 of the Constitution to reasonable, lawful, and fair administration action is limited unjustifiably. If administrative action, in this case a decision to expropriate, can be taken pursuant to a process that includes an irrational and arbitrary limitation period, then the administrative action cannot be reasonable and lawful.

85.3. An absurd or unworkable limitation period limits the right to access courts guaranteed by section 34 of the Constitution. It creates an arbitrary rule regarding when a person may approach a court for relief. This cannot be countenanced.



86. The unconstitutionality in section 19(2) infects other provisions, including sections 19(3) and 19(4).

86.1. First, the absurdity is repeated in section 19(3). Section 19(3) permits a disputing party to request the authority to institute proceedings for the judicial determination of compensation (instead of instituting proceedings themselves). However, section 19(3) requires the disputing party to make their request "within 90 days of the notice of expropriation". A disputing party can never request an authority to approach a court for the determination of compensation *after* a notice of expropriation, because a notice of expropriation could only have been issued had a court already determined the compensation.

86.2. Second, section 19(4) provides that a Court may extend the time in section 19(2) and (3). However, since that period can never start

running before a court determines compensation, a Court can never extend it.

87. Accordingly, section 19(2) and (3) of the Expropriation Act is unconstitutional. However, despite the targeted irrationality in sections 19(2) and (3), the import of this irrationality is to permeate the Act as a whole and to render it unworkable and therefore unconstitutional in its entirety. This is so for the following reasons:

87.1. The irrationality creates an ambiguity. On one reading alongside section 19(2), section 8(3)(g) suggests that an authority can issue a notice of expropriation *before* a Court determines a compensation amount. Section 8(3)(g) contemplates a notice of expropriation including the compensation amount, and section 19(2) suggests that only once an authority has decided to expropriate for a certain amount may either party approach a court to “approve” that amount.

87.2. On another reading alongside section 19(2), section 7(6)(a) suggests that an authority may only issue an expropriation notice *after* a Court determines a disputed compensation amount. Section 7(6)(a), echoing section 25(2)(b) of the Constitution, precludes a decision to expropriate without court approval of disputed compensation.

87.3. This ambiguity means that neither authorities nor property owners have reasonable clarity on a key component of the expropriation process: when can and should a Court determine a disputed compensation amount?



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87.4. This vagueness renders the entire Act unworkable. Authorities cannot begin an expropriation process—and owners cannot respond to a possible expropriation—without reasonable clarity on how the process will unfold. If no one can know when a Court may determine the compensation of a disputed expropriation, then the state cannot begin to expropriate, and owners cannot begin to respond to any expropriations.

V JURISDICTION AND THE INTERESTS OF JUSTICE

88. This Court has jurisdiction over this entire application, including the change resting on the final mandates.



88.1. This is *not* a case involving whether Parliament complied with a constitutional duty, like the duty to take reasonable steps to facilitate public participation.

88.2. Instead, this application concerns whether the manner and form requirements in enacting legislation have been met. It is akin to applications concerning legislative “tagging”, over which this Court has jurisdiction.

88.3. If notwithstanding the DA’s argument, this Court is to find otherwise, the DA reserves the right to impugn the final mandates in any appeals that may arise from a judgment of this Court or the Supreme Court of Appeal, should it be found that this Court lacks jurisdiction to determine the legality of the final mandates.

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89. Furthermore, this division of the High Court has jurisdiction to determine the entire application. First, the matter concerns the NCOP, which sits in Cape Town. Second, the Expropriation Act is of national application, so the cause of action regarding section 19 also arises in this Court's territorial jurisdiction. Third, the Minister has an office in Cape Town.
90. This application, in respect of its challenge to section 19(2) and (3), does not rest on a factual matrix. It is not the case that someone has been impacted—yet—by the absurd limitation period in section 19(2) and (3), it has grave constitutional implications.
91. The interests of justice necessitate hearing the challenge to section 19.
- 91.1. First, the challenge is brought alongside the challenge based on the final mandates—which is grounded in a factual matrix.
- 91.2. Second, the only other manner to bring the challenge would be to wait until a disputed expropriation is not resolved by consensus, and parties fail to approach a Court within a reasonable time. But this is impractical: an already delayed disputed expropriation would then be delayed even further by the bringing of this challenge. This is not a viable, alternative manner to considering this challenge.
- 91.3. Third, the relief sought in this application is of general and prospective application. The relief would impact all expropriations going forward. The relief would clarify—up front—when parties should approach a Court to determine compensation for a disputed expropriation. The relief would be in the public interest—not only for the interests of the



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DA and its members. It clarifies matters which are central to the rights of affected parties.

91.4. Fourth, interested parties can join these proceedings, either as amici curiae (through Rule 16A) or intervening parties. To my knowledge, other challenges to the Expropriation Act may also be brought (and perhaps heard alongside this one). There can be no suggestion that members of the public will not have an opportunity to present evidence and argument to the Court.



91.5. Fifth, as explained above, the absurdity in section 19 implicates at least three constitutional rights. The violation of these rights appears readily from the text of the Expropriation Act. It is not the case that this challenge—to understand the impact it has on rights—requires or would be materially affected by a factual matrix.

91.6. Finally, expropriation is one of the most hotly contested public issues in South Africa. It is a key public power, which the Minister and the government intend on exercising in the public interest. There is thus a pressing need to resolve the significant uncertainties in the expropriation process presented by the Act.

VI REMEDY

92. If the final mandates are unlawful, or if section 19 is irrational, then the Expropriation Act should be declared invalid in its entirety.

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93. However, there are technical differences to the remedy sought by the DA depending on whether it succeeds because of the unlawfulness of the final mandates or the irrationality of section 19.

(a) The final mandates

94. If any of the final mandates were conferred contrary to the Constitution, Mandating Act, or a rule of the provincial legislature then that mandate should be declared invalid and set aside.

95. In the first place, the DA submits that five of the seven final mandates grounding the NCOP's vote in favour of the Expropriation Bill should be set aside (because they were conferred contrary to the Constitution, Mandating Act, and the rules of the provincial legislatures). If so, or even if three of those final mandates are set aside, then the entirety of the Expropriation Act must be declared invalid under section 172(1)(a). If more than three final mandates fall, then there were not five valid votes in favour of the Act in the NCOP as required by section 65(1)(b) of the Constitution.



96. Alternatively, the DA, for the reasons given above, submits that even if one final mandate is set aside, then the entire Act is unconstitutional and falls to be declared invalid.

97. In the further alternative, and to the extent necessary, the DA impugns the relevant rules of the provincial legislatures. If any of the LPL, ECPL, GPL, or MPL's Rules unlawfully delegate powers to the Speaker or a committee, then they are unlawful and inconsistent with the Constitution. They must be declared invalid in terms of section 172(1)(a). If they are declared invalid, then

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the final mandates issued under those rules are also invalid and should be set aside.

98. I am advised that the default rule in this regard—should this Court declare a rule of the provincial legislature invalid—is that declaration operates retrospectively. No onus rests on the DA to present evidence regarding any just and equitable limitation of that retrospectivity. The DA expressly reserves the right to address any suggestion that there should be a limitation of retrospectivity in its replying affidavit and argument. The issue, in any event, only arises should this Court declare a provincial legislature's rule invalid.



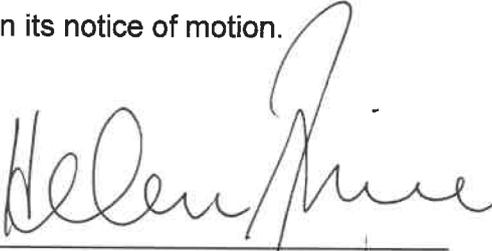
(b) Section 19

99. If the Expropriation Act is unconstitutional because of the irrationality and absurdity in section 19(2) and (3), then, in the first place, the DA submits that the entire Expropriation Act should be declared invalid in terms of section 172(1)(a) of the Constitution. As I explained above, the Act is unworkable given the irrationality in section 19. The Act cannot operate without reasonable clarity on when a Court can and should determine compensation. The consequence is that the entire Act is invalid if section 19 is invalid.
100. There are various ways in which Parliament may cure the unconstitutionality in section 19(2) and (3).
- 100.1. Parliament could replace “expropriation notice” with “intention notice”, allowing the 180-day period to run from the date of the intention notice served under section 7.

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- 100.2. Parliament could replace “expropriation notice” with the date on which the owner disputes the compensation offer in terms of section 7(4)(a)(iii).
- 100.3. Parliament could craft a provision in which the 180-day period begins once parties finally fail at mediating or reaching consensus on the compensation.
101. The point is that Parliament has various options available to it in deciding which event should trigger a period for parties to approach a court for the determination of compensation. Each option has its advantages and disadvantages. Each option strikes a slightly different balance between the interests of the expropriating authority and the property owner. This Court should be slow to make those choices which are primarily choices suitable for the legislature.
102. On this basis, the Court should thus only declare the Expropriation Act unconstitutional given the irrationality in section 19. There is no need for any further consequential relief or orders.
103. Alternatively, the Court should declare section 19(2) and (3) unconstitutional to the extent of its inconsistency with the Constitution.
104. For these reasons, the DA seeks the orders in its notice of motion.




HELEN ZILLE

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I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the prescribed oath and considers the oath to be binding. Thus signed and sworn before me on 2025-02-06 at **Cape Town.**

SOUTH AFRICAN POLICE SERVICE
STATION COMMANDER
PINELANDS

06 FEB 2025

PINELANDS
STASIEBEVELVOERDER
SOUTH AFRICAN POLICE SERVICE

[Signature]
N.I. SHERI
COMMISSIONER OF OATHS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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Limpopo Legislature

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FINAL MANDATE

To : The Chairperson of the NCOP

Name of Bill : Expropriation Bill

Number of Bill : [B23D – 2020]

Date of deliberation : 12 March 2024

Vote of legislature : The Province votes **in favour** of the Bill.



Hon. R.R. Molapo
Speaker: Limpopo Provincial Legislature

12/03/2024
Date

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EASTERN CAPE PROVINCIAL LEGISLATURE

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Date: 12 March 2024

Enquiries: Ms. T. Mxenge

Ref: Expropriation Bill

FINAL MANDATE

To : The Chairperson: National Council of Provinces

Name of Bill : Expropriation Bill

Number of Bill : [B23D -2020]

Date of Deliberation : 07 March 2024

Vote of the Legislature

The Province votes in favour of the Bill and mandates the Eastern Cape Permanent Delegate to the NCOP to vote in favour of this Bill.

Regards

HON. HELEN SAULS-AUGUST (MPL)
SPEAKER: EC PROVINCIAL LEGISLATURE





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Honourable A. Masondo
Chairperson –NATIONAL COUNCIL OF PROVINCES

FINAL MANDATE

Name of the Bill: **Expropriation Bill**

Number of the Bill: **[B23D-2020]**

Date of deliberation: **2024-03-12**

Vote of the Legislature: **The Legislature Supports the Expropriation Bill [B23D-2020]**

A handwritten signature in black ink, appearing to read "N. Klaaste".

Hon N Klaaste
SPEAKER

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THE PROVINCE OF NORTHERN CAPE



REPUBLIC OF SOUTH AFRICA

Fifth House Sitting of the Sixth Session, Sixth Legislature of the Province of Northern Cape, held virtually on 12th of March 2024 at 14:15

Unedited

SPEAKER: Honourable Members, we want to start with our House Sitting.

A warm welcome and good afternoon to everyone of you that are in attendance in this Sitting.

Through our order paper, honourable Members we will deal with voting mandates and therefore I would want to request that the honourable Members that can't use the gadgets to raise the hand, that they just quickly switch on the video and raise their hands for the counting purposes.

But a warm welcome to yourselves honourable Members.

Can we then observe a moment of silent prayer/meditation.

Thank you very much, honourable Members.

Honourable Members, we are gathered here on...

SECRETARY: Speaker is muted.

SPEAKER: My apology.

Honourable Members, we are gathered here on this virtual platform in this House Sitting.

My request would be that we only use one gadget for the purpose of this Sitting, but...

SECRETARY: Speaker, it seems you are automatically muted.

Translation:

Inaudible interjections (speaking softly):

Inaudible interjections (loud background):

Laughter:

Applause:

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(☞)

(☞)

(laughter)

(applause)

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My apologies.

SPEAKER: Okay.

Honourable Members, can we use only one gadget for this Sitting?

Those gadgets that we are not supposed to use, can we just switch it on silent so that we don't have interruptions whilst we are busy with our proceedings in the House.

Honourable Members, let me announce then any Announcements from the honourable Premier?

Is the honourable Premier on the platform?

SECRETARY: No, honourable Speaker.

SPEAKER: Okay.

Then, there will be no announcements if the Premier didn't mandate one of the Members of the Executive to any announcements on his behalf.

Thank you very much, Mr Haas.

Honourable Members, let me then request in terms of rule 136 for any Motions Without Notice.

I'm sure honourable Rhoda is back.

If there are no motions without notice, thank you very much honourable Members for your cooperation.

Can we then in terms of rule 135, let me allow then for any Notices of Motions.

Going once, going twice, going thrice.

There are no notices of motion.

Secretary, can you then read us the first order, please.

Honourable Members, am I audible?

MR MOOPELWA: You are audible, Speaker.

Mr Haas is reading today.

SPEAKER: Okay.

Thank you.

Translation:

Inaudible interjections (speaking softly):

Inaudible interjections (loud background):

Laughter:

Applause:

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(⇔)

(☰)

(laughter)

(applause)

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SECRETARY: Thank you, honourable Speaker.

The first order of the day is *Decision on a framed rule in terms of rule 2 of the Standing Rules of the Northern Cape Provincial Legislature*.

Thank you.

SPEAKER: Thank you very much, Secretary.

Honourable Members, you will recall that when we were conducting our State of the Province Address, I framed rule in terms of rule 2 of the Standing Rules to prevent any interference for the State of the Province Address and we want to take you to our rule 2 of our rules as the provincial Legislature which reads in terms of interim ruling:

- The Speaker may give ruling or make an interim rule in respect of any eventuality for which these rules do not provide.
- Ruling or interim rule made by the Speaker remains in force until a meeting of the Rules Committee or the House has decided thereon.
- A Secretary must place such a ruling on interim rule on the agenda of the Rules Committee or on the order paper for decisions and that is why we brought it on this House Sitting, the frame of the interim rule that I made at the SOPA.

Honourable Members, we have then not scheduled before our House Sitting a Rules Committee meeting and as I'm saying that there is purpose why we brought this rule to the House for adoption.

The rule states that no Member or person may interrupt the Premier while delivering the State of the Province Address.

Honourable Members, I will then give an opportunity to yourselves to vote by show of hands as I have said that the honourable Members that can't use the gadgets to raise their hands, can switch on their videos and raise their hands to that the Secretary can just count or making the counting process a little bit easier.

Honourable Members, those are in favour of this Rule, can we please raise our hands?

HON MEMBER, MAKATONG: Speaker, there is a breakage on our side.

SPEAKER: Honourable Makatong.

HON MEMBER, MAKATONG: Yes.

We missed...

SPEAKER: We are busy with...

Translation:	*
Inaudible interjections (speaking softly):	(⇔)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)

21

HON MEMBER, MAKATONG: Yes Speaker?

SPEAKER: Can you repeat honourable Makatong?

HON MEMBER, MAKATONG: We missed you at some point.

SPEAKER: Oh, my apology.

We are busy honourable Makatong with the voting process.

In terms of those who are in favour of the Rule that I have framed in the State of the Province Address and the Rule states that *no Member or person may interrupt the Premier while delivering the State of the Province Address.*

So now what we are currently busy with is to vote for those who are in favour of the Rule.

HON MEMBER, MAKATONG: You can count two from my gadget, thank you very much Speaker.

SPEAKER: Honourable Makatong is it possible that you can just switch on your video so that we can just see the hand of honourable Lekwene.

HON MEMBER, KOLOI: Honourable Speaker?

SPEAKER: Don't worry.

HON MEMBER, KAARS : I can see there is a party going on there.

SPEAKER: Someone raised...

HON MEMBER, KOLOI : Honourable Speaker!

SPEAKER: Yes honourable Member?

HON MEMBER, KOLOI: Honourable Kolo.

SPEAKER: Okay honourable Kolo.

HON EMMBER, KOLOI: Speaker, I'm using my phone here so I am struggling with both things.

So, I am in favour of the Rule.

SPEAKER: Okay, thank you.

Secretary did you finalise the counting?

Translation:

Inaudible interjections (speaking softly):

Inaudible interjections (loud background):

Laughter:

Applause:

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(⇄)

(☞)

(laughter)

(applause)

SECRETARY: Honourable Speaker, thank you so much.

In terms of the total, what I have not seen is the, when I scroll down to the honourable Tities and the honourable Senye, I could not see any reaction from them.

But in total we have 15 Members voting in favour. That is including of course the honourable Lekwene.

SPEAKER: Okay, thank you very much Secretary.

Honourable Members, can we then lower our hands.

I will give a minute and a half for us to lower our hands.

Honourable Bloem can you lower your hand? Thank you.

Secretary, am I correct if I say all of the hands have been lowered now?

Honourable Bloem?

SECRETARY: Only the honourable Bloem's hand.

SPEAKER: Honourable Bloem lower your hand please.

HON MEMBER, BLOEM: Thanks Speaker I did.

HON MEMBER, TITIES: Honourable Speaker, my hand was raised in favour.

SPEAKER: Honourable Tities don't wait up until we have finished with the voting and now you are coming in to say your hand was raised.

Honourable Members, can we give an opportunity for those who are against the Rule to raise their hands?

It doesn't seem Secretary, can you help me?

Honourable Lepolesa's hand has been raised.

Any other Member?

It doesn't seem as if any other Member has raised their hand.

HON MEMBER, KAARS: Honourable Kaars Speaker.

SPEAKER: Honourable Kaars also.

So, can you then do the rollcall just to verify how many Members raised their hands who are against the Rule?

Translation:	*
Inaudible interjections (speaking softly):	(⇄)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)

Handwritten signature and initials in the bottom right corner of the page.

SECRETARY: Thank you Speaker.

The only two hands that have been raised in the opposition are two.

We have two Members, thank you.

Speaker at this point we must just indicate then the abstentions, who did not raise hands.

I did not see the honourable Vilakazi, Senye and then afterwards the honourable Tities did indicate that she did vote actually in support which increased that number to 17 if that is allowed.

Thank you Speaker.

SPEAKER: Thank you very much Secretary.

Honourable Members, thank you very much honourable Lepolesa and honourable Kaars.

Honourable Members I would really want to humbly request that when we are busy with the voting process, if you can't raise your hand on your gadget, can you please just switch on your camera and just bring out your vote.

We can't count voting after we have closed the voting process. Whether it is in favour or whether it is against. Please honourable Members.

Thank you very much honourable Members.

This means then that this House has agreed upon the Rule and the Rule will then still reflect I our Rules with the 7th Administration.

Thank you very much.

Secretary can you read us the next Order please?

SECRETARY: My apologies Speaker, my gadget was muted.

Report of the *Committee on Finance, Economic Development on the Main Appropriation Bill 2024.*

Thank you.

SPEAKER: Thank you very much Secretary.

Honourable Members I will then allow and call upon the Chairperson of the Portfolio Committee on Finance, Economic Development & Tourism honourable Maneng to present the Committee Report to this House.

Translation:	*
Inaudible interjections (speaking softly):	(⇄)
Inaudible interjections (loud background):	(☹)
Laughter:	(laughter)
Applause:	(applause)

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Thank you very much honourable Maneng.

HON MEMBER, MANENG: Thank you very much Chair.

Honourable Speaker, I am presenting the report on behalf of the Portfolio Committee on Finance, Economic Development & Tourism on the Northern Cape Appropriation Bill B1 of 2024.

Introduction

The aim of the Bill is to effect appropriations of money from the Northern Cape Provincial Revenue Fund for the requirements of the Northern Cape Province in respect of the financial year ending 31 March 2025; and to provide for matters incidental thereto.

On Wednesday, 06 March 2024, the MEC of Finance, Economic Development & Tourism tabled the *Northern Cape Appropriation Bill* [B1 – 2024]. On the same day, Northern Cape Provincial Treasury briefed the Committee on the bill.

On Friday, 08 March 2024, the Committee considered and deliberated on the *draft* Committee Report based on the Bill.

Committee observations

The Committee notes and commends the department for building the provincial reserves to cushion continuous budget cuts and to ensure that apex Departments are still able to deliver services. The Committee further appreciates the additional R100 million allocated to assist with unfinished housing projects.

However, the Committee made the following observations:

- Year on year the Committee raised continuous concern of disaster funding as it relates to climate change that is not sufficiently reflected in the budget.
- Disadvantaged and severely struggling farmers do not receive the assistance required as opposed to established farmers during the natural disasters, and lack of access to water.
- The continued budget cuts on especially conditional grants prevent vital projects to be completed and the intended consequences as results.

The Committee therefore recommends that the Department must, together with all sector departments, both provincially and nationally, engage national treasury to secure more funding for disaster management due to climate change, especially in the light of implementation of the Climate Change Bill.

The Department must report on this process within 3 months. The Department must engage the relevant sector departments provincially, to develop policy and assisting

Translation:	*
Inaudible interjections (speaking softly):	(⇔)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)



disadvantaged and severely struggling farmers during natural disasters and water shortages.

The Department report on this process within 3 months. The Department must provide smart planned (⇔) on conditional grants, as well as to ensure that projects are completed within the financial year.

Reports to be forwarded to the Committee within 30 days of tabling of this report in the House on the following issues.

The package of the cost containment *vis a vis* cushioning of budget cuts. Committee endorsement on the Northern Cape Appropriation Bill, 2024.

The Portfolio Committee on Finance, Economic Development & Tourism takes note of the following Departments' Presentation and endorses the provincial fiscal framework makes provisions for receipts amounting to R68.1 billion, and payments of R66.2 billion.

This framework makes provision for committed (⇔) interest payments towards pledging and resources are also set aside for the implementation of revenue strategy in an attempt to enhance revenue in the province.

The Provincial Equitable Share has increased with an amount of R315 million due to Provincial Equitable Share Data Updates over the 2024 MTEF.

The Provincial Equitable Share is reduced to an amount of R1.6 billion over the 2024 MTEF owing to Governments fiscal consolidation measures.

An amount of R635 million is made available for debt redemption in the two outer years of the MTEF against the total debt accumulation of R715 million.

The additional allocation amounting to R1.8 billion over the MTEF period have been provided to the Department of Health and Education as carried through, relations to the 2023 wage agreement. An amount of R105 million has been reduced from the above allocations to make provision for conditional grant salary increases.

Additional R1 billion has been allocated for all sectors, including Health and Education for the 2024 ICS adjustments.

Provincial owned funding of R600 million pledging on the Human Settlement Development Grant.

Honourable Speaker, the Portfolio Committee on Finance, Economic Development & Tourism, herewith tables the Committee Report and supports the Northern Cape Appropriation Bill, B1 2024.

I thank you.

Translation:	*
Inaudible interjections (speaking softly):	(⇔)
Inaudible interjections (loud background):	(⊞)
Laughter:	(laughter)
Applause:	(applause)



SPEAKER: Thank you very much, honourable Maneng, Chief Whip of the Legislature.

Honourable Members, the Committee Report is before the House.

Are there any objections to the Report?

(Pause)

Going once, going twice, going thrice.

HON MEMBER, MAKATONG: No objections.

SPEAKER: Thank you very much, honourable Makatong and all honourable Members.

Honourable Members, I will allow then for the political Parties to make a declaration of vote, not exceeding 3 minutes.

We will start with the Democratic Alliance.

HON MEMBER, RHODA: Thank you, honourable Speaker.

Honourable Speaker, the Democratic Alliance notes the content of the report.

Thank you so much.

SPEAKER: The EFF.

HON MEMBER, LEPOLESA: Thank you very much, Madam Speaker.

From the EFF, we note the report.

Thank you.

SPEAKER: Thank you very much, honourable Lepolesa.

The Freedom Front Plus.

HON MEMBER, COETZEE: Thank you, honourable Speaker.

No, we regret the cuts in the different budgets, but we think the work in the province must go on, so we support the Report.

Thank you, honourable Speaker.

SPEAKER: Thank you very much, honourable Coetzee.

Translation:

Inaudible interjections (speaking softly):

Inaudible interjections (loud background):

Laughter:

Applause:

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(⇔)

(⚡)

(laughter)

(applause)



The ANC.

HON MEMBER, MANENG: Mr Maruping.

SPEAKER: Honourable Maneng.

HON MEMBER, MANENG: The ANC supports.

SPEAKER: Thank you very much, honourable Members for your cooperation and for the Declaration of Vote.

Secretary, can you read us the next order, please.

SECRETARY: Thank you, honourable Speaker.

The next order on the Order Paper is, *Decision, Principle of the Northern Cape Main Appropriation Bill, 2024.*

SPEAKER: Honourable Members, the Principle of the Northern Cape Appropriation Bill is before the House.

I will then allow again the voting process by show of hands.

I will allow 1 minute for honourable Members to raise their hands before we are starting with the counting process.

Those who are in favour of the Northern Cape Appropriation Bill, can we all raise our hands, please.

(Pause)

HON MEMBER, KOLOI: Honourable Speaker, honourable Kolo here.

SPEAKER: Honourable Kolo.

HON MEMBER, KOLOI: Yes, Speaker, I vote in favour of the Bill.

My gadget is failing me now.

Thank you.

SPEAKER: Thank you very much, honourable Kolo for announcing.

HON MEMBER, MANENG: Honourable Speaker, can we request Members to update the gadgets please.

Thank you very much.

Translation:

Inaudible interjections (speaking softly):

Inaudible interjections (loud background):

Laughter:

Applause:

*

(⇔)

(⚡)

(laughter)

(applause)

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SPEAKER: *(Laughter)*

I will do so.

Thank you.

SPEAKER: Honourable Lekwene, we don't see your hand.

HON MEMBER, LEKWENE: Honourable Speaker, here is a hand.

Can you see it?

SPEAKER: Huh uh, still not.

HON MEMBER, LEKWENE: No, here is it. Unless the Speaker is using an old gadget there. There is a problem with the gadget, Speaker.

SPEAKER: We are going to the 7th Administration; the 7th Administration will give us new gadgets.

HON MEMBER, LEKWENE: Please, please colleagues, can we upgrade; honourable Speaker.

SPEAKER: Honourable Lekwene, are you voting in favour?

HON MEMBER, LEKWENE: Absolutely, yes, honourable Speaker.

I'm in favour.

SPEAKER: Okay.

Thank you.

Secretary, can you count those who were voting in favour.

SECRETARY: Thank you, Speaker.

We have a total of 16 hands displaying here, but we know that the honourable Lekwene is with honourable Makatong. So, we have a total of 18 in support of the Bill.

Thank you, Speaker.

SPEAKER: Okay.

Thank you very much, Secretary.

Can the honourable Members lower their hands now?

Translation:	*
Inaudible interjections (speaking softly):	(⇔)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)

Can we allow then for the honourable Members that are voting against the Bill to raise their hands?

I will give one-minute again.

HON MEMBER, LEKWENE: It's only one hand.

SPEAKER: Secretary, am I seeing only one hand?

SECRETARY: Correct, Speaker.

There is only one hand in opposition to the Bill.

Thank you.

SPEAKER: Thank you very much, Secretary and thank you very much honourable Members.

Honourable Lepolesa, you may lower your hand now.

Thank you very much, honourable Members.

Honourable Members, in terms of our voting outcome, those who in favour of the Principle of the Northern Cape Appropriation Bill has won this voting.

Thank you very much, honourable Members.

This brings us to the conclusion of this voting.

HON MEMBER, VASS: Honourable Speaker.

SPEAKER: Yes, honourable Member.

HON MEMBER, VASS: I just want to check, did you count my hand?

SPEAKER: Honourable Vass, thank you.

We have finished with the voting.

Thank you very much, honourable Vass for joining us.

Honourable Members, the voting schedule is referred to as follows:

Budget Vote 1, Standing Committee on Premier.

Budget Vote 2, the Standing Committee on Premier & Legislature.

Translation:

Inaudible interjections (speaking softly):

Inaudible interjections (loud background):

Laughter:

Applause:

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(laughter)

(applause)



Budget Vote 3, the Portfolio Committee on Transport & Safety and Public Works.

Budget Vote 4, Portfolio Committee on Education, Sports, Arts & Culture; emphasising Education.

Budget Vote 5, Portfolio Committee on Safety & Liaison and Public Works; emphasising Public Works.

Budget Vote 6, Portfolio Committee on Finance, Economic Development & Tourism; emphasising Economic Development & Tourism.

Budget Vote 7, Portfolio Committee on Education, Sports, Arts & Culture; emphasising the Department of Sports, Arts & Culture.

Budget Vote 8, Portfolio Committee on Finance, Economic Development & Tourism; emphasising the Department of Finance.

Budget Vote 9, Portfolio Committee on COGHSTA.

Budget Vote 10, Portfolio Committee on Health & Social Development; emphasising the Department of Health.

Budget Vote 11, Portfolio Committee on Health & Social Development; emphasising the Department of Social Development.

Budget Vote 12, Portfolio Committee on the Department of Agriculture, Land Reform & Conservation.

This is the schedule before the House, honourable Members.

The Committee will then report back to the House after having received briefings from the different departments APPs of the respective votes.

The House is also reminded that in terms of *section 16 of the money bill amendment procedure and related matters act 9 of 2009* prescribe the timeframe for the passing of the appropriation act.

The schedule of the norms and standards for the Legislature in paragraph g, requires the Legislature to pass or reject the annual budget within four months of the start of the financial year, that's before the end of July.

Thank you very much, honourable Members.

We have then come to the end of order number 3. We will proceed with order number 4.

Secretary, can you read us order number 4, please?

Translation:	*
Inaudible interjections (speaking softly):	(⇄)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)

SECRETARY: Thank you, Speaker.

Order number four is *Committee Report on the Northern Cape Second Adjustment Appropriation Bill 2024*.

SPEAKER: Thank you very much, Secretary.

Honourable Members, I will call again on honourable Maneng to table the Committee Report on the Northern Cape Second Adjustment Amendment Bill 2024 to this House.

Thank you, honourable Maneng.

HON MEMBER, MANENG: Thank you very much, agbare Speaker.

Baie dankie.

We are now presenting the report of the Portfolio Committee on Finance, Economic Development & Tourism on the *Northern Cape Second Adjustment Appropriation Bill, [B3 of 2024]*

Introduction

The aim of the Bill is to effect adjustment to the appropriation of money from the Northern Cape Provincial Revenue Fund for the requirements of the office of the Premier in respect of the financial year ending 31st March 2024 and provide the matters incidental thereto.

On Wednesday, 6 March 2024, Northern Cape Treasury briefed the Committee on the *Northern Cape Second Adjustment Appropriation Bill, [B3 of 2024]*

On Friday, 8 March 2024, the Committee considered and deliberated on the draft committee report based on the Bill.

Committee observations

The committee made the following observations:

The Committee appreciates the allocation of R2.3 million donor funding from the Manufacturing, Engineering, and Related Services SETA (MerSETA) to the office of the Premier for the Skills Development Project but its not clear if the funds will be spent by the end of the 2023/2024 financial year.

Committee recommendations

The Committee therefore recommend that the department must:

- Together with the office of the Premier, ensure that the funds donated by the MerSETA are spent adequately within the 2023/2024 financial year. A report

Translation:	*
Inaudible interjections (speaking softly):	(⇄)
Inaudible interjections (loud background):	(⌘)
Laughter:	(laughter)
Applause:	(applause)

on the implementation must be forwarded to the Committee within two months of the tabling of this report.

- Committee endorsement on the Northern Cape Second Adjustment Appropriation Bill [B3-2024]
- The Portfolio Committee takes note of the Department's Presentation and endorses.
- The Office of the Premier received R2.3 million donor funding from MER SITA for the skills development project.

The Portfolio Committee on Finance, Economic Development & Tourism herewith tables and supports the Northern Cape Second Adjustment Appropriation Bill, B3 of 2024.

I thank you, honourable Speaker.

SPEAKER: Thank you very much, honourable Chief Whip.

Honourable Members, the Committee Report on the Northern Cape Second Adjustment Appropriation Bill is before the House.

Are there any objections to the Report.

(Pause)

If none, this House then agreed upon the Report.

Let me then give an opportunity to the Political Parties to make their Declaration of Vote.

The Democratic Alliance.

HON MEMBER, RHODA: Thank you, honourable Speaker.

The Democratic Alliance notes the content of the Report.

Thank you.

SPEAKER: Thank you very much, honourable Rhoda.

The EFF.

HON MEMBER, LEPOLESA: Thank you very much, madam Speaker.

The EFF notes the Report.

SPEAKER: Thank you very much, honourable Lepolesa.

The Freedom Front Plus.

Translation:	*
Inaudible interjections (speaking softly):	(⇄)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)

HON MEMBER, COETZEE: Thank you, honourable Speaker.

We support the Report.

Thank you.

SPEAKER: Thank you very much, honourable Coetzee.

The ANC.

HON MEMBER, SENYE: Thank you very much, honourable Speaker.

Honourable Speaker, the African National Congress supports the Report.

SPEAKER: Thank you very much, honourable Senye.

Thank you very much, honourable Members, for your Declaration of Vote.

Secretary, can you read us the last order for the day, please.

SECRETARY: Thank you, honourable Speaker.

The last order of the day is: *Decision on the Northern Cape Second Adjustment Appropriation Bill, 2024.*

SPEAKER: Thank you very much, Secretary.

Honourable Members, we will then proceed again with the voting. And I will give 1 minutes for honourable Members to raise their hands, those who are in favour of the Northern Cape Second Adjustment Appropriation Bill, can you raise your hands, please.

HON MEMBER, KOLOI: Honourable Speaker, honourable Koloi here.

I vote in favour of the Bill, honourable Speaker.

SPEAKER: Thank you, honourable Koloi, thank you, honourable Lekwene.

HON MEMBER, VASS: Honourable Vass in favour, honourable Speaker.

SPEAKER: Thank you very much, honourable Vass.

HON MEMBER, LEKWENE: Please, please, please, Speaker, let's count the votes.

SPEAKER: Is it one of the old gadgets.

Honourable Lekwene, I thought it's only us in the Legislature that is having old gadgets.

Translation:	*
Inaudible interjections (speaking softly):	(⇄)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)



HON MEMBER, LEKWENE: It's new like the Premier, *hy is deep*, Madam Speaker, he is very deep.

SPEAKER: Secretary, can you count the hands, please. Including the Members that announced that they are voting in favour.

SECRETARY: Thank you, honourable Speaker.

The total number reflected here on the screen is 15, but we know that the honourable Lekwene, the honourable Koloï and the honourable Vass, which then takes the amount to 18.

Thank you, Speaker.

SPEAKER: Thank you very much.

Honourable Members, you may lower your hands.

I don't see any hands that has been raised, still.

Secretary, can you see from your side.

SECRETARY: The honourable Liebenberg lowered her hand.

SPEAKER: Thank you very much, honourable Members.

Honourable Members, can we then give an opportunity to the honourable Members that are voting against the Adjustment Appropriation Bill.

There are no hands, Secretary, from your side.

SECRETARY: I can't see any hands.

Thank you, Speaker.

SPEAKER: Thank you.

I see the hand of honourable Lepolesa.

SECRETARY: Just came up after we concluded, Speaker.

SPEAKER: Thank you, honourable Lepolesa, you can lower your hand.

We will count you are against.

Honourable Members, with 18 against 1, those who are in favour of the Second Adjustment Appropriation Bill, 2024, has then won this voting.

Translation:	*
Inaudible interjections (speaking softly):	(⇔)
Inaudible interjections (loud background):	(⚡)
Laughter:	(laughter)
Applause:	(applause)



Thank you very much, honourable Members.

Honourable Members, this brought us to the end of our House Sitting.

Maybe just a quick announcement that in terms of our Programme at the Legislature, we prepared ourselves to rise by the end of March, but due to some outstanding legislation that still needs to be passed by the NCOP, as well as the National Assembly, honourable Members, there is a possibility that we will have to come back. Whilst we are also busy without political responsibilities, that we will have to come back after the end of March.

So, if it happens that honourable Members are called for, whether if it's a Public Hearing or whether if it's for a House Sitting, can you please avail yourself. We know that all of us really do have a very busy schedule. All of us are supposed to be on the ground, working for our different political parties. But still, the procedures and the processes of our Legislature as well as the NCOP and the National Assembly must still proceed.

So, our programme then depends on the programme of the NCOP.

We did get an indication that the NCOP will maybe have their last Sitting by round about the 22 of May. If they can do it before, convene the Sitting before, they will really try their utmost best. But as I was saying, honourable Members, our programme at the Legislature really depends on the programme of the NCOP. And in the absence of the NCOP not finalising their business, we can also not finalise our business.

So, my humble request will be that we avail ourselves so that we can also finalise the business of the Sixth Administration.

So, thank you very much, honourable Members for your attendance in this House Sitting.

Also, thank you very much to our officials that have availed themselves to be in attendance of this Sitting.

Honourable Members, this brought us then to the end of our proceedings for today.

The House Sitting then stands to adjourn.

Thank you.

Translation:	*
Inaudible interjections (speaking softly):	(⇔)
Inaudible interjections (loud background):	(⊘)
Laughter:	(laughter)
Applause:	(applause)





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OFFICE OF THE SPEAKER

FINAL VOTING MANDATE

TO: The Chairperson of the National Council of Provinces.

Hon A Masondo

NAME OF BILL: Expropriation Bill

NUMBER OF BILL: [B23D-2020]

DATE OF DELIBERATION: 11 March 2024

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and detail of the bill and therefore votes in favour of-

- Expropriation Bill

L Mekgwe

HON NTOMBI MEKGWE
SPEAKER
GAUTENG PROVINCIAL LEGISLATURE

Date: 11 March 2024

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OFFICE OF THE SPEAKER

Enquiries: Adv. B Mdluli
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FINAL MANDATE

To : The Chairperson of the NCOP
Hon NA Masondo

Name of the Bill : Expropriation Bill

Number of the Bill : [B23D - 2020]

Date of Deliberation : 12 March 2024

Vote of the Legislature : The delegation representing the province of Mpumalanga in the National Council of Provinces is hereby conferred with a mandate to vote in favour of the Bill.

Masilela

HON. MC MASILELA

12 March 2024
DATE

SPEAKER: MPUMALANGA PROVINCIAL LEGISLATURE

Ref 13/4/3/5/4

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INFRASTRUCTURE DEVELOPMENT AND PROPERTY MANAGEMENT PORTFOLIO COMMITTEE

FINAL MANDATE

ON THE:

EXPROPRIATION BILL [B23D-2020]

DATE: 11 MARCH 2024

1. INTRODUCTION

The Chairperson of the Infrastructure Development and Property Management Portfolio Committee Hon. Mpho Modise, tables the Committee's report on the Final Mandate on the Expropriation Bill [B23D] [2020]. This is in accordance with Rule 163 read with Rule 248 of the Gauteng Provincial Legislature Standing Rules.

2. PROCESS FOLLOWED

On the 30th September 2022, the Speaker, Hon. Ntombi Mekgwe, formally referred the Expropriation Bill [B23B] Section 76, to the Portfolio Committee on Infrastructure Development and Property Management for consideration and processing. This was in terms of Rule 245 (1) read with 246 (1), 247 and 248.

On the 22nd February 2023, the Committee attended a Virtual Workshop hosted by the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure on the

11/3/24

Expropriation Bill B23B]. The Committee also invited the National Department of Public Works to brief the Committee on the Bill. On Wednesday, 15th March 2023, Mr. Johannes Lekala from the National Department of Public Works gave a briefing to the Committee on the Bill. Thereafter, the Gauteng Department of Infrastructure Development and Property Management (GDID) made a presentation on the views of the Executive regarding the Bill. The Legal service Unit representative Ms Winnie Ngubane presented on the legal opinion of the Bill. The Committee Researcher Ms Nthabiseng Seroba also made a presentation on the Socio- economic impact analysis on the Bill.

The Committee further sent out individual notices to the following targeted stakeholders:

- Land access movement
- Legal resources
- Lawyers for Human Rights
- Socio Economic Rights Institute
- Wits Law School
- Centre for applied legal services
- Black Sash
- Section 27 Public interest law centre
- South African Human Rights Commission
- Commission for the promotion and protection of rights
- The Commissioner for Gender Equality
- Banking association of South Africa
- South African Institute of race relations
- Webber Wentzel
- Woman's Legal Rights Centre
- Royal House

In fulfilling its constitutional mandate to facilitate public participation when processing this Bill; the Committee issued out several notices on different media platforms calling upon members of the public to make inputs on the Bill. These notices were published as follows:

Newspapers

- Beeld
- Sowetan
- City Press

Social Media Platforms

- Tweeter
- Facebook
- Instagram
- GPL Website

Radio Promotions

- Jozi FM & SAFM
- Lesedi FM & Thetha FM
- EK FM
- RSG and Pheli FM
- Radio, Moretele FM
- Motsweding FM and
- Westside FM

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This was to enable the Committee to request members of the public and stakeholders to make comments on the Bill, following that, the Committee convened five public hearings and a round table discussion at the GPL's Auditorium. Public hearings were conducted in the following areas:

- Friday, 28th April 2023: City of Johannesburg Metropolitan Municipality at the Gauteng Legislature City Hall
- Monday, 15th May 2023: Sedibeng Region at Vereeniging City Hall
- Thursday, 1st June 2023: Ekurhuleni Region at Duduza Multi-Purpose Centre
- Monday, 5th June 2023: Tshwane Region at Akasia Community Hall
- Friday, 9th June 2023: Westrand Region at Mogale City Centenary Hall

Subsequent to that, the Committee also convened a session with the Gauteng Traditional Leaders on the 11th August 2023, at Duduza Multipurpose Centre (Ekurhuleni).

In general, the Committee was not satisfied, with a few attendances of Stakeholders in all public hearings save for hearing with the Traditional Leaders, noting the importance of the Expropriation Bill. This was as a result of budgetary constraints, experienced by the Committee and GPL where a number of invited stakeholders had to be reduced.

The Portfolio Committee deliberated and adopted the Negotiating Mandate of the Expropriation Bill [B-23-B-2020] on Friday, 22 September 2023.

On Monday, 11 March 2024, the Committee considered the Report and minutes of the NCOP Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure on the Bill. The said report reflected the proposed amendments which the Portfolio Committee had proposed to the Select Committee and the responses thereon by the National Department. The Committee noted the responses and is of the view that they largely dealt with its proposed amendments and responded to the matters of concern raised in its Negotiating Mandate. A minority report reflecting the dissenting views on the Bill was recorded from the DA.

3. PRINCIPLES AND DETAILS OF THE BILL

The principle of the Bill is to amend the National Expropriation Bill, to substitute and insert certain definitions. In this regard the Expropriation Bill seeks to facilitate the implementation of section 25 of the Constitution, 1996.

- Section 33 of the Constitution further requires the Bill to incorporate the principle of **just administrative action**. This improvement in the Bill seeks to mitigate the drastic nature of expropriation.
- notification through publication of an intended expropriation.
- notification to all known affected persons of an intended expropriation, including the purpose and rationale for such expropriation.
- interested parties to be afforded an opportunity to raise **objections** and make representations to the Expropriating Authority before a decision to expropriate is taken; and the Expropriating Authority to consider all submissions from interested parties, before deciding whether to proceed with an expropriation.

4. SUBMISSIONS

Amongst submissions received were from individuals, Royal House, Congress of Traditional Leaders of South Africa, Contralesa, Democratic Alliance (DA), Economic Freedom Fighters (EFF) and VF Plus political parties, Banking Association of South Africa, Commission for Gender Equality, AFRI forum,

5. SUMMARY OF THE STAKEHOLDER'S SUBMISSIONS MADE DURING THE PUBLIC HEARINGS

The Committee noted with concern that the submissions mostly received were not relevant to the Expropriation Bill, rather they were mainly on the Land Right Act and Service delivery related issues,

The Committee further noted that there was also a rejection of the clause **12(3)** of the Bill which was echoed by almost all who attended. Clause 12(3) proposed the expropriation with no compensation, by the public. Most submissions proposed the **restitution** of the land to its rightful owners, however, the following were also received and noted by the Committee.

4.1 The definition of "Court"

Submission: has a reference to "intangible property" in sub-clause c. Intangible property is not clearly defined and this should be facilitated either by introducing its own definition or the definition of property must be amended to exclude intangible property.

5.2 Definition of “Disputing Party”

Submission: In earlier versions of the Bill, the definition of disputing party contained reference to a “counteroffer”. This has been removed in the final version of the Bill and should be added back.

5.3 Definition of “Holder of right”:

Submission: The definition of holder of right should also include a registered right in addition to an unregistered right.

4.4 Definition of “expropriation”:

Submissions: It is unclear whether the definition of expropriation includes temporary expropriation.

5.5 Compulsory acquisition of property:

Submission: In addition, the words “compulsory acquisition of property” should be replaced by “the curtailment of rights of an owner in property”, and the addition of “through (i) compulsory acquisition of property as a form of direct expropriation and (ii) custodial taking or regulatory taking of property in the case of indirect expropriation.

5.6 “Public purpose”:

Submission: The definition of public purpose is vague and must be amended to make it clearer.

5.7 “Valuer”:

Submission: The definition of valuer is vague and must be amended particularly in respect of “suitably qualified”.

5.8 Clause 3(3):

Submission: is redundant as it is covered by 3(2) and is contrary to the purpose of the Bill as it does not Clause.

5.9 Clause 3(5) (a):

Submission: should be amended such that payment of compensation should be a pre-requisite of vesting. “The ownership of the property vest in the relevant organ of state on the date on which transfer of ownership of the property is registered by the relevant deeds registry office in terms of the Deeds Registries Act (1937);” The words “of expropriation” should be deleted, directly relate to “public purpose” or “public interest”.

5.10 Clause 3(5)(b):

Submission: Possession should only be given on transfer of ownership to the relevant organ of state and not prior to that. “Possession of the property will vest in the relevant organ of state on the date of registration of transfer of ownership of the property in the name of the State”.

5.11 Clause 5 (1)

Submission: Clause 5(1) must be amended so that is not only objective assessments are considered when determining value but also subjective factors such as financial and sentimental value. This is necessary since land is an emotive issue and, in this scenario, the owner is being 'forced' to give up their land.

5.12 Clause 5(5):

Submission: It is recommended that longer timeframes be included throughout the Bill that are more realistic than the commonly referenced '20 day period'. Clause 5(7) Greater specificity is required in terms of the standards of damage and the quantum of damages. A "reasonable standard" is also not sufficient. Any damage should be repaired as close to the original state as possible, which indicates that a prior assessment of the property should be done prior to work commencing. Damage should not only apply to tangible assets but should include elements such as impacts on livestock and ability to farm.

5.13 Clause 5(7):

Submission: Greater specificity is required in terms of the standards of damage and the quantum of damages. A "reasonable standard" is also not sufficient. Any damage should be repaired as close to the original state as possible, which indicates that a prior assessment of the property should be done prior to work commencing. Damage should not only apply to tangible assets but should include elements such as impacts on livestock and ability to farm.

5.14 Proposed reformulation:

"If the property in question is damaged through an act contemplated in subsection (2), an affected person may deliver written demand to the expropriating authority and the expropriating authority must confirm within 15 days receipt as well as the acceptance of notification. If the expropriating authority has accepted the written demand, the expropriating authority must repair and/or restore the property to the state it was in prior to the damage taking place within the confines of the National Environmental Management Act (1998) and any other environmental legislation with similar requirements or compensate the owner to repair and/or restore the property to the state it was in prior to the damage taking place or compensate for the damage within 90 days after the above notification date."

5.15 Clause 6(3)

Submission: Clause 6(3) The Bill should be amended to include clear consequences should the municipal manager fail to adhere to the 20 day timeframe provided for response. Clause 7(2)(h)(i) + (2) should be amended to clarify that the objections lodged via of this clause carry weight in terms of the final decision to expropriate and are not provided merely for

consideration. It is suggested that this provision should be included in the investigation phase, as it will have more impact there.

5.16 Clause 7(2)(h)(i)

Submission: Clause 7(2)(h)(i) and (2) should be amended to clarify that the objections lodged via of this clause carry weight in terms of the final decision to expropriate and are not provided merely for consideration. It is suggested that this provision should be included in the investigation phase, as it will have more impact there.

6. OBJECTIVES OF THE BILL

The Bill seeks to repeal the current Expropriation Act and bring the regulation of expropriation in line with the Constitution. The objectives are also to seek to make provision for the expropriation of property for a public purpose or in the public interest. To regulate the procedure for the expropriation of property for a public purpose or in the public interest. Furthermore, it seeks to make provision for instances where nil compensation may be just and equitable for expropriation in the public interest.

7. POSITION BY THE GAUTENG PROVINCIAL DEPARTMENTS

In line with the GPL Rule 250 (3) (a) the Committee sought the views of the relevant Member(s) of the Executive on the Bill. In this regard the Gauteng Department of Infrastructure Development and Property Management, support the Expropriation Bill B23B-2020 for the following stated reasons:

- 7.1 The Act does not have retrospective effect therefore will not affect any notice that had already been delivered prior to its commencement unless the parties agree to apply the Act;
- 7.2 Extension of the right to expropriate to be in line with the constitution as it is for a public purpose or in the public interest;
- 7.3 Expropriation is not limited to land;
- 7.4 Ownership of the expropriated property vests in government on the date of expropriation;
- 7.5 Clarifies the issue of compensation and what can be considered or excluded in the calculation thereof;
- 7.6 Clarifies that expropriation can be without compensation which is in line with the limitations clause in the Constitution;
- 7.7 Sets out clear procedures to be followed which includes the intergovernmental consultative process; and
- 7.8 Deals with how disputes are to be dealt with by the parties including mediation.

8. SOCIO-ECONOMIC FINANCIAL IMPLICATIONS

The Committee observed that the Bill, to a certain extent, will have financial and economic and social implications.

8.1 Financial Implications

- 8.1.1 Pertaining to the financial implications of the Bill, the different spheres of government will have to financially plan for processing expropriation and implement all three phases of expropriating land. However, it is important to note that due to the openness of the evaluation to expropriate process, there is possibility that the government might face litigation for expropriation.

8.2 Socio – economic Implications

The Committee further observed that:

- 8.2.1 while there has been much emphasis on the socio-economic implication of passing the legislation there is also a broad socio-political implication. While the argument to protect the economy is based on reassuring investors and stability, it does not recognize that lack of transformation might also have socio-political implication that will reproduce the instability and investor confidence it seeks to protect.
- 8.2.2 According to Economic and Business lobby groups the possibility of expropriation without compensation has already started discouraging essential investment in the country. It is argued that the destruction of all property rights will cut South Africa off from the developed world which will result into instability, uncertainty, and job losses.
- 8.2.3 Much of the contestation is within the agricultural space in which the sector is not confident that the government is equipped to implement the legislation in manner that will not affect economic prospects.
- 8.2.4 The Expropriation Bill has been dubbed the property clause which has been argued to be a Neo-Liberal extension of the 1913 Land Act. Fundamentally, in South Africa the expropriation bill does not only relate to property but also relates to wealth distribution, retribute and equity in South Africa.
- 8.2.5 According to Agrisa, the likely outcomes of expropriating agricultural land for less than market value is severe, including increased food insecurity and

unemployment due to reduced investment in local agriculture. This view is supported by a report of Agriculture, Land Reform and Rural Development Minister which state that, while 1,672 farmers were allocated 1.73 million hectares, the Land Acquisition and Redistribution programme experienced challenges from the underutilisation of the land because of a lack of money for input and operational costs, inadequate infrastructure, lack of market access for what farms produce, the inability to pay rent and for basic services like water and lights, also land invasions by neighbouring communities.

- 8.2.6 The President has continuously regurgitated that the Amendments in the Act does not target well established productive Land but rather it seeks to address land that is currently not being utilized. Despite this reinforcement, business lobbyists are concerned that expropriation with no compensation might be abused by the state in the future as in the case of Zimbabwe which would result in economic regression for South Africa.
- 8.2.7 It is evident that business forums are concerned with how the potential investors might interpret the expropriation with no compensation, in which this perception might result in investors withdrawing from investing in South Africa.
- 8.2.8 Furthermore, that the government does not have the capacity to implement the legislation in accordance which might result in state resources being wasted and government facing litigation. But moreover, there is a concern, that despite the President reassurance, the legislation of expropriation with no compensation might be abused.
- 8.2.8 The amendment of the Bill has been welcomed by social justice groups, who believe that this is a step in the right direction towards resituate and wealth redistribution. There has been a number of disputes regarding the racial inequalities that continue in this country coupled with the inability for the government to address socio-economic injustices employed during Apartheid.
- 8.2.9 Activists have argued that wealth production in many instances was a product of socio-economic injustice where land was stolen and forced removals in which families were never compensated for. The existing inequality and lack restitution have resulted in resurgence of riots and racial clashed in South Africa in which economic rating urgency have highlighted as an indicator of socio-political instability.

- 8.2.10 It is believed that government can use this opportunity to address issues of inequality through ensuring that marginalised groups who have been socially, economically, and politically excluded may now have access to spaces that can make them active participants. The expectation is that the government would use this clause to transfer valuable land to marginalised communities, especially in urban areas, where many black people still live in the peripheral of the cities. However, activist have concerns that marginalised community in rural areas might fall victim to expropriation clause. It is argued that the term public interest and unused land/unproductive land is relative. There is a population of people who still use land for subsistence, informal traditional business and cultural activities but the government has overlooked these communities.
- 8.2.11 This was evident when the activist from the Khoisan where protesting at the Union Building demanding that the state reinstates their land and resources for cultural traditional purposes.

9. FINAL POSITION OF THE COMMITTEE

The Portfolio Committee on Infrastructure Development and Property Management supports the principle and details of the Expropriation Bill [B23D-2020].



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ADOPTED ON
28TH FEBRUARY
2017

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- (3) The Committee considering an NCOP matter must complete its task within the time frames determined by the Speaker, where required or appropriate, table a report.
- (4) If the matter has been classified as important, the Committee must hold public hearings.
- (5) If the matter is one on which the Province's delegation to the NCOP will be expected to vote in the NCOP –
 - (a) the Committee must inform the relevant MEC and give him or her opportunity to present the views of the Executive Council to the Committee;
 - (b) the Committee must determine the position the delegation is to take in discussions with other delegations to the NCOP and, where appropriate, confer a negotiating mandate on the delegation; and
 - (c) the Committee report must contain recommendations in respect of a voting mandate to be conferred on the delegation by the House.
- (6) The Chairperson of the Committee must inform the Head of the Province's delegation in writing of a decision of the Committee in terms of sub-rule (5) (b).

234. Plenary consideration and resolution on mandate by the House

- (1) The House must deal with the report and recommendations on an NCOP matter by Committee.
- (2) In the case of a matter classified as ordinary or technical by the Speaker the House takes a decision without debate.

(3) In the case of a matter on which the Province's delegation will be expected to vote in the NCOP, the House must by resolution confer authority to vote on the delegation.

(4) Such a resolution may-

- (a) provide a specific instruction concerning the position that the delegation is to take on a matter; or
- (b) give the delegation the authority to vote as the delegation determines on a matter or a number of matters.

(2) If the House gives authority to the delegation to vote as the delegation determines, it may specify the procedure that the delegation must follow to determine how it will vote and may also require the support of a certain number of Members of the delegation

235. Proof of authority to cast votes in the NCOP

The Speaker must –

- (a) certify the conferral of authority to vote on behalf of the Province; and
- (b) provide a copy of the certificate to the Chairperson of the NCOP and every Permanent and Special Delegate.

236. Ratifications of Mandates to the NCOP

Mandates conferred by the Speaker when the House is not in session must be ratified by resolution of the House in its next sitting.

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EASTERN CAPE PROVINCIAL LEGISLATURE

STANDING RULES



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for negotiation when the relevant NCOP select committee considers the Bill after tabling and before consideration of final mandates, and may include proposed amendments to the Bill.

- (2) The Committee to which a Bill requiring a negotiation mandate is referred must –
 - (a) receive briefings on the Bill;
 - (b) conduct public hearings on the Bill;
 - (c) consider the Bill together with inputs received during public hearings; and
 - (d) confer authority on the Legislature's delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling and before consideration of final mandates, and may include proposed amendments to the Bill.
- (3) The Chairperson of the Committee must sign the negotiating mandate in the format determined in Schedule 1 of the Mandating Procedures Act.

Final Mandate

40. (1) The Committee which provided a negotiating mandate must receive a briefing on the outcome of the negotiations on the Bill and prepare the recommendation of a final mandate on the Bill referred to it for consideration by the House.
- (2) The Committee submits a report to the House, outlining the process followed in arriving at the final mandate and the reasons for recommending the final mandate.
- (3) The House must consider the Bill and the report of the Committee and may:
 - (a) adopt the report;
 - (b) amend the report; or
 - (c) refer the Bill back to the Committee for further consideration.
- (4) The Speaker, or the person designated to preside in the House on the Bill, must sign the final mandate in the format determined in Schedule 2 of the Mandating Procedures Act.
- (5) If the exigencies of the Legislature do not allow a sitting of the

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House to confer a final mandate, the Speaker may, after consultation with leaders of political parties in the Legislature provide and sign the final mandate, but the mandate must be ratified by the House at the first available opportunity.

Voting Mandate

- 41.** (1) If a matter arises from the deliberations of the NCOP select committee when considering final mandates which may necessitate consideration by the Legislature, the Bill must be referred to the Committee which recommended the final mandate.
- (2) The Committee must receive a briefing on the outcome of the deliberations of the NCOP select committee when considering final mandates and consider the recommendation of a voting mandate on the Bill.
- (3) The Committee submits a report to the House, outlining the process followed in arriving at the voting mandate and the reasons for recommending the voting mandate.
- (4) The House must consider the Bill and the report of the Committee and may:
- (a) adopt the report;
 - (b) amend the report; or
 - (c) refer the Bill back to the Committee for further consideration.
- (5) The Speaker, or the person designated to preside in the House on the Bill, must sign the voting mandate in the format determined in Schedule 2 of the Mandating Procedures Act.
- (6) If the exigencies of the Legislature do not allow a sitting of the House to confer a voting mandate, the Speaker may, after consultation with leaders of political parties in the Legislature provide and sign the voting mandate, but the mandate must be ratified by the House at the first available opportunity.

Time frames for providing Mandates

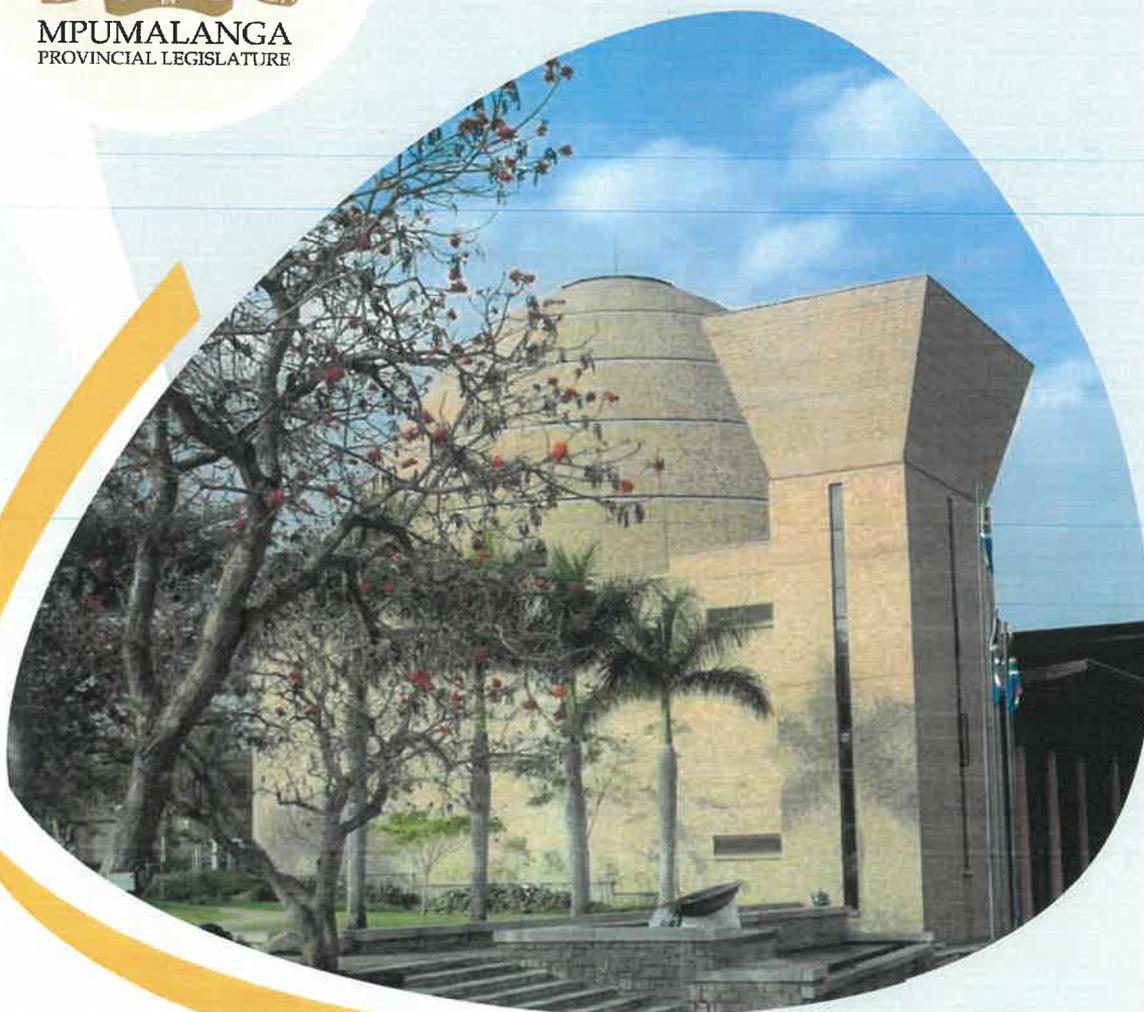
- 42.** Negotiating, final and voting mandates must be provided within the time frames determined by the NCOP.

Copies of Bills

- 43.** (1) Copies of NCOP Bills must be available in the library and the website of the Legislature.

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RULES AND ORDERS

2020 Edition

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CHAPTER 17

BILLS AMENDING THE CONSTITUTION AND NATIONAL BILLS AFFECTING THE PROVINCE

Bills amending the Constitution

200. (1) A Bill referred to the Legislature in terms of section 74(5)(b) of the Constitution for the views of the Legislature, shall be referred to a relevant committee by the Speaker, for consideration and report back to the Legislature.

(2) After receiving the report on the Bill from the relevant committee, together with the particulars of the proposed amendment to the Bill, the Legislature shall state its views on the Bill by way of resolution.

(3) The Secretary to the Legislature must transmit the resolution of the Legislature to the person or committee that submitted the Bill containing particulars of the proposed amendment and must inform the Secretary to Parliament in writing of the views of the Legislature on the said particulars.

(4) A Bill referred to the Legislature dealing with a matter in section 74(8) of the Constitution must be referred to a relevant committee for consideration and report back to the Legislature.

(5) The Legislature may approve or reject the Bill referred to it under this rule.

(6) The Legislature must confer authority on the provincial delegation to cast a vote on its behalf in accordance with these Rules and the Mandating Procedures of Provinces Act, 2008 (Act No. 52 of 2008).

National Bills affecting provinces

201. (1) When a Bill is referred to the Legislature by the National Council of Provinces in terms of section 76 or section 74 of the Constitution, the Speaker must refer such Bill to the Chairperson of Committees and the relevant Committee.

CHAPTER 17

- (2) The committee to which the Bill is referred must consider the Bill and, through the Chairperson of the committee, confer a negotiating mandate to the provincial delegation to the NCOP in terms of section 5 of the Mandating Procedures of Provinces Act, 2008 (Act No. 52 of 2008).
- (3) The committee must consider views expressed by the NCOP Select Committee after considering negotiating mandates from provinces and public submissions received, and any proposed amendments to the Bill and report to the Legislature recommending that the Legislature confer a final mandate on the Province's delegation to the NCOP to vote in favour or against the Bill or to abstain from voting.
- (4) The Legislature must confer a final mandate on the Province's delegation to the NCOP in terms of the Mandating Procedures of Provinces Act, 2008.
- (5) If after receiving final mandates from provinces, the NCOP Select Committee amends the Bill or any matter arises from its deliberations that necessitate reconsideration of the final mandate, the committee must reconsider and recommend to the Legislature which must confer a voting mandate in terms of the Mandating Procedures of Provinces Act, 2008.
- (6) If the Legislature is not sitting when a final or voting mandate is required, the Speaker may confer such mandate as recommended by the committee.
- (7) The Legislature must ratify the Speaker's conferral of the mandate at the sitting of the House.

Draft National Bills affecting provinces

- 202.** (1) The Speaker must refer a draft Bill and the memorandum referred to in rule 159(1) and (2) of Joint Rules of Parliament to the Chairperson of Committees and the relevant Portfolio Committee, in order—
- (a) to assist the Legislature and the relevant committee to plan their work; and
 - (b) to enable members of the committee to acquaint themselves with and to develop their positions with regard to the proposed legislation.



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STANDING RULES

This version of the Standing Rules of the Gauteng Provincial Legislature has been Framed under the provisions of the Constitution of the Republic of South Africa, 1996.

VERSION DATE: 27 NOVEMBER 2018

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Part 3: Delegates to the National Council of Provinces

34. Nomination and appointment of permanent delegates

- (1) When a permanent delegate to the NCOP is to be appointed in terms of section 61(2) of the Constitution, the Speaker must within a reasonable time invite the parties represented in the Legislature in writing, to submit written nominations.
- (2) A permanent delegate must be appointed by a resolution of the House.

35. Appointment of special delegates

- (1) Special delegates to the NCOP referred to in section 60(2) of the Constitution must be designated from time to time by a resolution of the House. A resolution under this Rule may be proposed without notice.
- (2) The Committee of the Legislature concerned with the matter on the NCOP Agenda for which special delegates are needed must identify the special delegates.
- (3) If the Committee is unable to meet, the Speaker may identify the delegates.
- (4) A motion proposing the designation of special delegates must –
 - (a) indicate the purpose of the appointment; and
 - (b) be placed on the Order Paper.
- (5) The resolution appointing special delegates must be recorded in the Minutes of Proceedings.

36. Regulation of the House business when the House is not in sitting during Business period

- (1) The Speaker may, in consultation with the leaders of political parties, settle certain matters including but not limited to the adoption of the final mandate.
- (2) In the absence of consensus, the matter must be dealt with by the House Sitting.
- (3) Any such matter settled in terms of this Rule, must be ratified by the House at the first available opportunity.
- (4) All decisions taken in accordance with this Rule shall have full effect of the House resolution.
- (5) The Speaker must, at the next sitting, announce information on the resolution adopted in terms of this Rule.

37. Concurrence for appointment of special delegates

A resolution appointing special delegates may not be adopted if the Premier or Whip of the party entitled to the special delegate objects to it.

38. Proof of appointment as special delegates

The Speaker in consultation with the Premier must –

- (1) certify the appointment of special delegates and the purpose of the appointment in writing; and
- (2) provide a copy of the certification to each special delegate and to the Chairperson of the NCOP.

39. Termination of appointment as special delegate

- (1) The appointment of a Member as a special delegate may be terminated at any time by a resolution of the House.

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248. Requirements for final mandates

- (1) Every final mandate required in terms of schedule 2 of the Mandating Procedures for Provinces Act must be on the letterhead of the Legislature and must:
 - (a) indicate the name and number of the Bill being voted on;
 - (b) indicate whether the Provincial Legislature votes in favor of or against; or abstains from voting on the Bill;
 - (c) contain the signature of the Speaker or of a person designated by the Speaker to preside over that specific Bill; and
 - (d) be addressed to the Chairperson of the NCOP or a person designated by the Chairperson of the NCOP.
- (2) The Legislature must confer authority on the Premier or a delegate designated by the Premier, to cast a vote in an NCOP plenary.
- (3) The Premier, or a delegate of a Provincial delegation to the NCOP designated by the Premier, must cast a vote on behalf of a Provincial Legislature.
- (4) The Legislature must confer authority on its Provincial delegation to the NCOP to cast a vote when the relevant NCOP Select Committee considers a Bill prior to voting thereon in an NCOP plenary.
- (5) If no matter arises from the deliberations of the NCOP Select Committee when considering final mandates which may necessitate consideration by a Provincial Legislature, the Provincial delegation to the NCOP must table the Province's final mandate in the NCOP plenary as the Province's voting mandate.

249. Referral of Section 75 Bill

- (1) When the NCOP refers a Bill described in Section 75 of the Constitution to the Speaker:
 - (a) the referral of the Bill by NCOP must be noted in the Announcements, Tabling and Committee Reports; and
 - (b) the Speaker may refer the Bill and any accompanying papers to the relevant Committee if he or she thinks that the Legislature should consider the Bill.
- (2) The Secretary must make copies of the Bill available on request to any Member.

250. Consideration by Committee

- (1) A Committee to which a Bill has been referred under Rule 245(1) may consider the Bill immediately. A Committee may not consider any other NCOP matter until the Programming Committee has prioritized it, but the Committee may make recommendations concerning the prioritization of the matter to the Programming Committee.
- (2) After the Programming Committee has prioritized the NCOP matter, the Committee to which it has been referred must deal with it in accordance with its prioritization, but a Committee may decide that it does require hearings on a matter that the Programming Committee classified as ordinary or unimportant.
- (3)
 - (a) Whenever a Committee considers a matter on which the Provincial delegation will be expected to vote in the NCOP, the Committee must inform the relevant Member of the Executive Council and give him/her an opportunity to present the views of the Executive Council on the matter to the Committee.
 - (b) If the Member of the Executive Council does not respond to the invitation and the Committee believes that it cannot conclude the matter without

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**RULES OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

- (2) A member who desires that the Legislature recommends legislation to the National Assembly in terms of section 104(5) of the Constitution, must table such recommendation for the purpose of obtaining approval of the House. The views of a relevant MEC if any must also be included in the recommendation.
- (3) The Rules relating to legislative proposals submitted by a member other than an MEC apply *mutatis mutandis* to recommendations under this Rule, but the House may only approve a recommendation.
- (4) The Speaker must upon approval of the recommendation by the House, refer the recommendation to the Speaker of the National Assembly.

Part 4
Other matter that requires voting mandate

Other matter that requires voting mandate

225. (1) When a matter other than a Bill is referred to the Legislature for a voting mandate in terms of section 65 of the Constitution, the Speaker tables the matter and refers it to the Rules Committee for prioritisation.
- (2) The Speaker may by resolution of the House refer the matter to an ad hoc or other committee, or the matter may be dealt with in a manner that the House determine by resolution.
 - (3) The committee must consider the matter and report to the House on a voting mandate to be conferred to the province's delegation in the NCOP.
 - (4) The House must consider the report and by resolution confer a voting mandate on the province's delegation in the NCOP.
 - (5) The Speaker must submit the resolution to the Chairperson of the NCOP and conveys its contents to the province's permanent and special delegation to the NCOP.
 - (6) The relevant committee nominates special delegates to present the Legislature's position.

Part 5
Delegates

Provincial delegation

226. The province is in terms of section 60 of the Constitution represented by a single delegation comprising of 10 delegates, constituted as follows:

Voting by province

241. Voting on behalf of the province takes place as set out in the Mandating Procedures of Provinces Act, 2008 (Act 52 of 2008) conferred by way of resolution of the Legislature within the time frames required by the NCOP.

Role of special delegate in Legislature

242. A special delegate must report back to the Legislature or a committee when delegated to attend an information session on a section 76 Bill or any other matter at the NCOP.

CHAPTER XI

PROCESS FOR TABLING OF REPORT AND WRITTEN INSTRUMENT (OTHER THAN LEGISLATION) IN HOUSE

Application

243. This Chapter applies to a written instrument received by the Legislature, other than draft legislation, that have to be formally dealt with in the House.

Tabling and referral of report and written instrument

244. (1) The presiding officer must table all written instruments and reports that are required in terms of legislation without delay, or if the Legislature is in recess, on its first sitting day when it resumes its sitting from an MEC.
- (2) The presiding officer must without delay refer all reports and written instruments to the relevant committee.
- (3) If there is doubt as to which committee is appropriate to handle the report or written instrument, the presiding officer after consultation with the Chief Whip, must decide the issue.

Resolution affecting Executive Council

245. The Secretary must communicate resolutions affecting the Executive Council to the Premier or the responsible MEC.

Reply required

246. The Legislature or any committee thereof may require from the Executive Council within a specified period a written or oral reply to any matter which the Legislature brings to the attention of the Executive Council.

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

And

**MINISTER OF PUBLIC WORKS AND
INFRASTRUCTURE**

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

**SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE**

Fifth Respondent

**SPEAKER OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE**

Sixth Respondent

**SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE**

Seventh Respondent

**SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE**

Eighth Respondent

**SPEAKER OF THE KWAZULU NATAL PROVINCIAL
LEGISLATURE**

Ninth Respondent

**SPEAKER OF THE FREE STATE PROVINCIAL
LEGISLATURE**

Tenth Respondent

**SPEAKER OF THE MPUMALANGA PROVINCIAL
LEGISLATURE**

Eleventh Respondent

**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

HORATIO HENDRICKS

do hereby make oath and state that:

1. I am an adult male and a member of the Eastern Cape Provincial Legislature, representing the Democratic Alliance.
2. The contents of this affidavit are within my personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.
3. I have read the applicant's founding affidavit deposed to by Helen Zille and confirm the correctness thereof insofar as it pertains to me. I confirm in particular the allegations at para 30 and 42 concerning the final mandate purportedly issued on behalf of the Eastern Cape Provincial Legislature.



HORATIO HENDRICKS

I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the prescribed oath and considers the oath to be binding. Thus signed and sworn before me at Humansdorp SAPS on 06 **FEBRUARY 2025**.

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EST
A. Venter

COMMISSIONER OF OATHS



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

And

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

**SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE**

Fifth Respondent

**SPEAKER OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE**

Sixth Respondent

**SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE**

Seventh Respondent

**SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE**

Eighth Respondent

**SPEAKER OF THE KWAZULU NATAL PROVINCIAL
LEGISLATURE**

Ninth Respondent

**SPEAKER OF THE FREE STATE PROVINCIAL
LEGISLATURE**

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**SPEAKER OF THE MPUMALANGA PROVINCIAL
LEGISLATURE**

Eleventh Respondent



**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

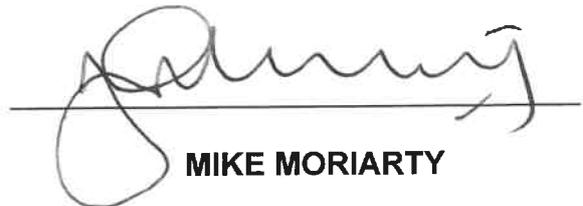
CONFIRMATORY AFFIDAVIT

I, the undersigned

MIKE MORIARTY

do hereby make oath and state that:

1. I am an adult male and a member of the Gauteng Provincial Legislature, representing the Democratic Alliance.
2. The contents of this affidavit are within my personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.
3. I have read the applicant's founding affidavit deposed to by Helen Zille and confirm the correctness thereof insofar as it pertains to me. I confirm in particular the allegations at para 32, 44 to 47 concerning the final mandate purportedly issued on behalf of the Gauteng Provincial Legislature.


MIKE MORIARTY

I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the

prescribed oath and considers the oath to be binding. Thus signed and sworn before me at Rosebank on 6th FEBRUARY 2025.



COMMISSIONER OF OATHS

NICHOLAS ANDREAS PAPAS
Commissioner of Oaths
Practising Attorney R.S.A.
3rd Floor Office Suites, 54 on Bath
Corner Tyrwhitt Avenue, Rosebank, 2196
Tel: 011 447 3690 / 3721 / 3968



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

In the matter between:

CASE NO:

DEMOCRATIC ALLIANCE

Applicant

And

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

**SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE**

Fifth Respondent

**SPEAKER OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE**

Sixth Respondent

**SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE**

Seventh Respondent

**SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE**

Eighth Respondent

**SPEAKER OF THE KWAZULU NATAL PROVINCIAL
LEGISLATURE**

Ninth Respondent

**SPEAKER OF THE FREE STATE PROVINCIAL
LEGISLATURE**

Tenth Respondent

**SPEAKER OF THE MPUMALANGA PROVINCIAL
LEGISLATURE**

Eleventh Respondent

**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

HAROLD MCGLUWA

do hereby make oath and state that:

1. I am an adult male and a member of the Northern Cape Provincial Legislature, representing the Democratic Alliance .
2. The contents of this affidavit are within my personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.
3. I have read the applicant's founding affidavit deposed to by Helen X Zille and confirm the correctness thereof insofar as it pertains to me. I confirm in particular the allegations at para 31 and 43 concerning the final mandate purportedly issued on behalf of the Northern Cape Provincial Legislature.



HAROLD MCGLUWA

I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the

prescribed oath and considers the oath to be binding. Thus signed and sworn before me at PHILIPPI SAPS on 06 FEBRUARY 2025.

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE

06 FEB 2025

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CST
M. MDUKU

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE

06 FEB 2025

PHILIPPI SAPS

SUID-AFRIKAANSE POLISIEDIENS

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

And

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

**SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE**

Fifth Respondent

**SPEAKER OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE**

Sixth Respondent

**SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE**

Seventh Respondent

**SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE**

Eighth Respondent

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LEGISLATURE**

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LEGISLATURE**

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**SPEAKER OF THE MPUMALANGA PROVINCIAL
LEGISLATURE**

Eleventh Respondent

**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

TRUDIE MARIA JOHANNA GROVE-MORGAN

do hereby make oath and state that:

1. I am an adult female and a member of the Mpumalanga Provincial Legislature, representing the Democratic Alliance.
2. The contents of this affidavit are within my personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.
3. I have read the applicant's founding affidavit deposed to by Helen Zille and confirm the correctness thereof insofar as it pertains to me. I confirm in particular the allegations at paragraphs 33 and 48 concerning the final mandate purportedly issued on behalf of the Mpumalanga Provincial Legislature.



TRUDIE MARIA JOHANNA GROVE-MORGAN

I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the

prescribed oath and considers the oath to be binding. Thus signed and sworn before me at CAPE TOWN on 06 FEBRUARY 2025.



COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
STATION COMMANDER
CAPE TOWN
2025-02-06
CAPE TOWN
STATION COMMANDER
SOUTH AFRICAN POLICE SERVICE

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

And

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES

Third Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth Respondent

SPEAKER OF THE LIMPOPO PROVINCIAL
LEGISLATURE

Fifth Respondent

SPEAKER OF THE EASTERN CAPE PROVINCIAL
LEGISLATURE

Sixth Respondent

SPEAKER OF THE GAUTENG PROVINCIAL
LEGISLATURE

Seventh Respondent

SPEAKER OF THE NORTH WEST PROVINCIAL
LEGISLATURE

Eighth Respondent

SPEAKER OF THE KWAZULU NATAL PROVINCIAL
LEGISLATURE

Ninth Respondent

SPEAKER OF THE FREE STATE PROVINCIAL
LEGISLATURE

Tenth Respondent

SPEAKER OF THE MPUMALANGA PROVINCIAL
LEGISLATURE

Eleventh Respondent

Handwritten signature and initials in black ink, located at the bottom right of the page.

**SPEAKER OF THE WESTERN CAPE PROVINCIAL
LEGISLATURE**

Twelfth Respondent

**SPEAKER OF THE NORTHERN CAPE PROVINCIAL
LEGISLATURE**

Thirteenth Respondent

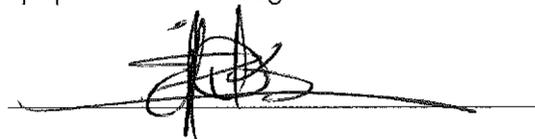
CONFIRMATORY AFFIDAVIT

I, the undersigned

EVELYN LINDY WILSON

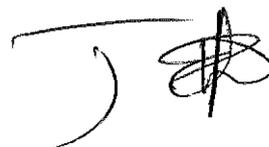
do hereby make oath and state that:

1. I am an adult female and a member of the Limpopo Provincial Legislature, representing the Democratic Alliance.
2. The contents of this affidavit are within my personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.
3. I have read the applicant's founding affidavit deposed to by Helen Zille and confirm the correctness thereof insofar as it pertains to me. I confirm in particular the allegations at paragraphs 29 and 41 concerning the final mandate purportedly issued on behalf of the Limpopo Provincial Legislature.



EVELYN LINDY WILSON

I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the



prescribed oath and considers the oath to be binding. Thus signed and sworn before me at Polokwane on 06 FEBRUARY 2025.

JAMES MOKGOADI
W/O

~~00214005~~

COMMISSIONER OF OATHS

