

## **Draft laws back up in crammed calendar dominated by must-dos, leaving key legislation dangling – Daily Maverick 5 November 2020**

the 36 draft laws before Parliament, five are up against an early December deadline so the October mini budget can be implemented. The 2020 crunch means key policy initiatives remain in the legislative pipeline – from expropriation without compensation to the National Health Insurance.

Parliament's justice committee has cleared its decks to process the bundle of three bills dealing with gender-based violence, from making online protection order applications possible to tightening bail criteria in sexual offences. Dubbed the GBV Bills, they have been prioritised in the national legislature in the wake of the Presidency-driven process on dealing with gender-based violence since the GBV summit in September 2018.

Public hearings were held; this week came the deliberations. The latest available committee programme indicates a target date of 18 November to finalise the GBV Bills in the House – the most recent House programme notes “legislation” on 24 November – and refer it to the National Council of Provinces (NCOP) before the end-of-year recess from early December.

But this prioritisation means other draft laws, such as the Cannabis for Private Purposes Bill, are delayed into 2021.

The statutory pressure is on, with 4 December pencilled in as the date to wrap up all matters related to the Medium-Term Budget Policy Statement so its adjusted allocations can be implemented. MPs' oversight through Budget Review and Recommendation Reports is made more difficult by the extension of the deadline to submit annual reports, including audited financial statements, by six weeks to mid-November 2020.

Home Affairs has already indicated it will submit its annual report only at the end of November, according to the Announcements, Tablings and Committee Report (ATC), with Rural Development and Land Reform tabling its 2019/20 annual report only on 31 January 2021. When annual reports are not timeously tabled, it's usually an indication of trouble.

In this time squeeze, the legislative pipeline is not flowing. Among the affected legislation are key policy decisions, including expropriation without compensation, National Health Insurance (NHI), and a bundle of financial amendment laws such as the State Liability Amendment Bill that seeks to structure settlements against the state in, for example, medical malpractice cases.

The Expropriation Bill returned to Parliament for the fourth time in October. Apart from a briefing to the public works committee, little has yet happened.

This legislation is needed as a law of general application to give effect to Section 25 of the Constitution, dubbed the property clause. While it runs in parallel, it is not dependent on the ad hoc committee's constitutional amendment process that's still underway. The aim is a

constitutional amendment to expressly state the possibility of nil compensation for land expropriation.

Crucially, the Expropriation Bill deals not just with land, but all property. Expropriation must be for public purpose and in the public interest. Regarding land, “nil compensation” may be determined in defined circumstances, including when land is not used or is abandoned, when the land poses a health or physical risk, or where an organ of state owns land, but does not use it for its core function.

The first attempt to replace the apartheid Expropriation Act failed in 2008 when parliamentary law advisers indicated that the draft was unconstitutional for not allowing recourse to courts – and the department declined to remedy that. Another departmental attempt in 2013 did not go beyond a public comment stage.

In 2015 a much reworked and revised Expropriation Bill was tabled in Parliament. It was passed in 2016, just before the local government elections that year, but then returned to Parliament over concerns it had not been properly consulted on.

In a political decision, the governing ANC kept the finalisation of the draft laws in abeyance amid the contestation over expropriation without compensation ahead of the 2017 ANC Nasrec national conference. Then, with a conference decision in favour of expropriation without compensation, and [a parliamentary agreement](#) on a constitutional review in late 2018, the 2015 Expropriation Bill was rejected in the National Assembly.

With the December 2018 decision in the House to pursue a constitutional amendment of Section 25, the Cabinet announced it would publish [another Expropriation Bill](#) for public comment. That was done in early 2019; and that Bill finally made it to Parliament in October 2020.

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It’s also been a long road for the National Health Insurance Bill, needed to establish universal health coverage free of charge to everyone at points of care. Despite being a cornerstone of ANC policy offerings since 2010, and also recent election promises, it remains a law in the making.

On Wednesday the parliamentary health committee deliberated for more than two hours over whether to rescind an earlier decision to outsource processing the written public comment submissions, numbering over 62,000. And the draft report on the countrywide [NHI Bill public hearings](#) was returned to committee staff to fill in the gaps.

Both the written submissions and report on public hearings are central to any legislative deliberation. It remains unclear when the committee processes will resume, but it’s unlikely the NHI Bill will see the light of day for a vote in the House in 2020.

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Following the ConCourt judgment, Home Affairs assured MPs in July 2020 that it was working on an electoral policy review, and that a constitutional amendment would be necessary. That was also the ministerial message in August. In early October a parliamentary home affairs briefing was cancelled as there was nothing to update MPs on. The Tuesday 3 November home affairs committee meeting that was similarly meant to be updated also did not happen.

It's understood the process is at Cabinet stage. Once a draft law is approved there, it's tabled in Parliament. The time pressure is ratcheting up on this legislation, on Parliament to adopt a law, and possibly a constitutional amendment by 10 June 2022, but also on the Electoral Commission of South Africa (IEC). With the IEC, on average, taking upwards of two years to prepare for an election, it would now also need time to adjust for independent candidates in its usual structures, processes and practices.

Among the bills before Parliament are those President Cyril Ramaphosa returned, some as far back as June.

This week Parliament's agriculture committee referred the returned 2016 Liquor Products Amendment Bill to the House of Traditional Leaders to fix the initial oversight, given that the draft law deals with African traditional beer.

The trade and industry committee has scheduled the Copyright Amendment Bill alongside the Performers' Protection Amendment Bill that goes back to 2016.

But not clear yet is what, if anything, has been done to reconsider the so-called Secrecy Bill, officially the 2010 Protection of State Information Bill.

It was passed in late 2012, but referred back to the ad hoc committee that originally processed it to fix typos and cross-referencing. While opposition parties pushed for a broader review, this was nixed and the Protection of State Information Bill was again adopted in April 2013. Since then it's been sitting in two presidents' in-trays, until Ramaphosa returned it to Parliament in June 2020.

It is now sitting in the national legislature in-tray. It's a not insubstantial legislative load in a squashed parliamentary calendar. **DM**