

Press Release

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South African Institute of Race Relations

The power of ideas

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Four key changes needed in Expropriation Bill – IRR

“Unconstitutional and potentially extraordinarily damaging”, is how the Institute of Race Relations (IRR) describes the Expropriation Bill of 2019. The Bill is open for public comment until the end of today, and the IRR urges South Africans to stand up against the measure by demanding four key changes.

First, the definition of “expropriation” in the Bill must be deleted or changed. The current definition is intended to allow the state to take custodianship of all land without any compensation having to be paid. This definition is in breach of Section 25 (the property clause) of the Constitution, under which the word “expropriation” has its usual broad meaning under customary international law. International law would include a custodial taking within the definition of expropriation – and the Bill’s definition must be broad enough to include this, too.

Second, the Bill must stop giving lawful property owners fewer rights than criminals using property for the commission of crimes. Property being used by criminals can be seized by the state under asset forfeiture rules – but only after its use for criminal purposes has been proved and a court order for its confiscation has been obtained.

By contrast, a home or other property can be expropriated by a government department under the Bill simply by completing a few preliminary steps – and without

ever having to prove to a court that the expropriation is really in the public interest or that the compensation is truly just and equitable.

Perversely, the Bill acknowledges the need for a prior court order before a government department can enter on to property it wants to investigate with a view to subsequently expropriating it. It also says that a temporary expropriation cannot be extended without a prior court order. But when it comes to the far more serious matter of a permanent expropriation, the Bill excludes the need for a prior court order. That exclusion is unconstitutional.

The Bill must be amended to make it clear that a disputed expropriation cannot proceed without a prior court order confirming the validity of the expropriation; deciding on the compensation payable; requiring payment to be made before ownership is transferred to the state; and setting out appropriate safeguards for people who face eviction from their homes.

Third, the “nil” compensation provisions in the Bill must be deleted. The courts already have the power to decide that “just and equitable” compensation may mean zero in particular – and highly unusual – circumstances, so there is no need for this clause. This open-ended provision is also too vague to be constitutional.

Fourth, the Bill should be amended to state that “just and equitable” compensation must include an amount to make good all direct losses resulting from expropriations. People who lose homes, business leases, mining rights, and rights to occupy customary law plots must find alternatives, pay moving costs, and often cope with lost income for some time. Compensation is not “just and equitable” unless it makes good these losses.

A Synopsis of the IRR’s submission on the Bill to the Department of Public Works is available [here](#).

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