

**Contents**

The Expropriation Bill is back — and it's still unconstitutional. 1

**Author**

Anthea Jeffery

**Editor-in-Chief**

Frans Cronje

**Editor**

Anthea Jeffery

**Head of Research**

Lerato Moloi

**Head of Information**

Tamara Dimant

**Consultant**

John Kane-Berman

**Typesetters**

Martin Matsokotere

Sarah Zwane

**Contact details***Telephone:* (011) 482-7221*e-mail:* [info@irr.org.za](mailto:info@irr.org.za)*website:* [www.sairr.org.za](http://www.sairr.org.za)

## The Expropriation Bill is back — and it's still unconstitutional

**The Expropriation Bill is back, and it is just as unconstitutional as its predecessors of 2008 and 2013. It still gives the State the power to take ownership and possession of property by notice to the owner – and without a prior court order confirming the validity of the expropriation. It also puts great pressure on expropriated owners to accept whatever compensation the State might offer: this time, by saying they will be deemed to have accepted these amounts unless they sue for more within two months. Overall, the Bill is a draconian measure that makes it quick and cheap for all state entities to take from farmers, miners, firms, and ordinary people their most important assets: often their sole assets, built up over a lifetime of endeavour.**

### A revised Expropriation Bill

**T**he Expropriation Bill of 2015 (the Bill) has finally been released by the Department of Public Works. The minister, Thulas Nxesi, wants it pushed through Parliament before year end. However, the 2015 Bill is just as unconstitutional as its 2008 and 2013 predecessors.

Crucially, the Bill still seeks to allow any 'expropriating authority' to take property by serving a notice of expropriation on the owner. Ownership of the property in question will then pass automatically to the State on the 'date of expropriation' identified in the notice, which could be the day after the notice of expropriation was served.

Like its predecessors, the Bill empowers the State to take property upfront, by notice of expropriation to the owner, and leaves it to those affected to seek redress in the courts thereafter – if they can afford this.

However, 'self-help' of this kind is barred by both the common law and the Constitution. Under the common law, the State cannot simply seize property – even a gun likely to have been used in committing a murder – without first obtaining a court order in the form of a search-and-seizure warrant.

This common law protection for property rights has since been buttressed by the 1996 Constitution, which lays down a number of requirements for a valid expropriation. The

**Under the common law, the State cannot simply seize property – even a gun likely to have been used in committing a murder – without first obtaining a court order.**

Constitution also prevents people from being evicted from their homes without express judicial authority and, in many instances, the provision of suitable alternative accommodation.

The State's Expropriation Bill ignores both the common law and the Constitution. It is also unnecessary, for the existing Expropriation Act of 1975 – which has many worthwhile features – can easily be brought into line with the Constitution through three simple amendments.

**Background to the Bill**

The current Expropriation Act of 1975 (the Act) allows the minister of public works to expropriate property for public

purposes, such as the building of a new road. The compensation payable for expropriated property must be based on market value, plus damages for resulting loss suffered (such as a loss of income), plus a further small amount as a *solatium* (solace). Though ownership and possession pass to the State on the dates specified in the expropriation notice, at least 80% of the compensation due must be paid when the Government takes possession. Interest on the outstanding balance is also payable from then on, until the full amount has been paid. These provisions limit the scope for expropriation and ensure an adequate measure of compensation, so helping to prevent any abuse of the power to expropriate.

The ruling African National Congress (ANC) has long argued that the Act is unconstitutional for two reasons. First, the Act does not allow expropriation 'in the public interest', whereas the Constitution does. Second, the Act leaves out four factors which are listed in the Constitution's property clause (Section 25) as relevant to the compensation payable on expropriation. Under Section 25, compensation depends on both market value and the four 'discount' factors, these being:

- the current use of the property;
- the history of its acquisition;
- the extent of any direct state subsidy in its acquisition or capital improvement; and
- the purpose of the expropriation.

The ANC is correct in highlighting these two contradictions between the Act and the Constitution. However, it overlooks the most important contradiction of all. Provisions allowing the State to take ownership of property by notice to the owner might have been acceptable in 1975 when the Expropriation Act was adopted – and the principle of parliamentary sover-

**The ruling African National Congress (ANC) has long argued that the current Expropriation Act is unconstitutional for two reasons.**

eignty applied – but they are now in conflict with South Africa’s Constitution. Instead of recognising this fundamental weakness, the Bill repeats these contentious provisions and seeks to give them new life.

**Provisions allowing the State to take ownership of property by notice to the owner might have been acceptable in 1975, but they are now in conflict with South Africa’s Constitution.**

**Key features of the Bill**

***A wide definition of ‘property’***

According to the Bill, ‘property is not limited to land and includes a right in such property’. This definition is wide enough to include movable property, along with mining rights, servitudes, patent rights, and shares in companies.

***A large number of ‘expropriating authorities’***

The Act gives the power to expropriate to the minister of public works alone, but the Bill extends this power to any ‘expropriating authority’. Included among such authorities are all ‘organs of state’, along with any other person

‘empowered to...expropriate’ by the Bill itself or ‘any other legislation’.

***A wide ambit for expropriation***

The Bill allows expropriation not only ‘for public purposes’, but also ‘in the public interest’. Though this wording is in keeping with the property clause, the Bill’s definition of ‘the public interest’ goes beyond what the Constitution says.

According to the Constitution, ‘the public interest includes the nation’s commitment to land reform, and to reforms to bring about equitable access to South Africa’s natural resources’. The Bill starts by echoing this wording, but then adds that the public interest ‘includes other related reforms in order to redress the results of past racial discriminatory laws or practices’. Hence, whereas the Constitution permits the expropriation of land and other natural resources, the Bill seeks to allow it in much wider circumstances.

***Preliminary requirements***

Under the Bill, an expropriating authority must fulfil various preliminary requirements before issuing a notice of expropriation. First, it must negotiate with the owner and try to buy the property on reasonable terms. If this fails, it must investigate the suitability of the property for its purposes, consult with the local municipality and relevant government departments, and find out what rights lessees or other third parties might have in the property. (The matter of third party rights is examined below.)

During its investigation, an expropriating authority may send suitably skilled inspectors to examine the property and, if necessary, ‘survey, dig, or bore into it’. However, these inspectors may not enter the property without the consent of the owner or an order of court.

If the expropriating authority then decides to expropriate the property, it must serve a notice of *intention* to expropriate on the owner. It must also publish this notice in the Government Gazette and two local newspapers. The notice must invite the owner to lodge his objections within 30 days, and say what amount he seeks as ‘just and equitable’ compensation.

**Under the Bill, an expropriating authority must fulfil various preliminary requirements before issuing a notice of expropriation.**

The expropriating authority must 'timeously' consider the owner's objections but need not give reasons for rejecting them. The authority must, however, inform him in writing within 20 days if it accepts his proposed compensation. If it does not – and if no agreement on compensation can be reached within another 20 days – then the expropriating authority may 'proceed to expropriate' in any event.

**At no point in these preliminary processes does the expropriating authority have to demonstrate that the expropriation is valid under the Constitution.**

At no point in these preliminary processes does the expropriating authority have to demonstrate to the owner (let alone the courts) that expropriation is objectively in the public interest, or that the compensation offered is truly just and equitable in all the relevant circumstances.

#### **Notice of expropriation**

Having decided to proceed, the expropriating authority must serve a *notice of expropriation* on the owner. This notice must describe the property, give reasons for the expropriation, and state the amount of compensation offered. It must also stipulate the 'date of expropriation', this being the date on which 'the ownership of the property described in the notice...vests in the expropriating authority'.

On this specified date – and regardless of the owner's objections – ownership passes to the State automatically and by operation of law.

The notice of expropriation must also stipulate 'the date on which the expropriating authority will take possession of the property'. On this date, possession is 'deemed to have passed' to the State. Again, this will happen automatically and irrespective of the owner's objections. The owner is entitled to the use and income from the property until possession passes, but must also take care of the property and prevent its value deteriorating.

According to the Bill, the specified date of expropriation 'shall not be earlier' than the date the notice of expropriation is served on the owner. Since no minimum waiting period is specified, there is nothing to prevent the date of expropriation from being set as the day *after* the service of this notice. Nor is there anything to prevent the passing of possession very soon after the transfer of ownership. Hence, if notice of expropriation were to be served on the owner on the first day of a particular month, ownership could pass on the second day of that month and the right to possession on the third.

#### **Compensation**

Under the Bill, the compensation payable must be 'just and equitable, reflecting an equitable balance between the public interest and the interests of the owner, having regard to all relevant circumstances'. The factors listed in the Bill include market value and the four 'discount' factors in the property clause, as earlier described.

The Bill's wording reflects the constitutional formula on compensation. However, most of the discount factors are difficult to quantify in money, giving an expropriating authority con-

**It must also stipulate the 'date of expropriation'. Regardless of the owner's objections, ownership then passes to the State automatically and by operation of law.**

siderable discretion as to how they should be costed. The expropriated owner may thus be offered significantly less than market value: perhaps only 60% of this sum, as some commentators have suggested.

### ***Objections to the compensation offered***

If the owner objects to the amount of compensation offered in the expropriation notice, he must explain in writing to the expropriating authority what amount he claims instead. He must do so within 20 days, and the expropriating authority then has 20 days to respond by offering a different (or the same) amount of compensation.

## **The expropriated owner may be offered significantly less than market value: perhaps only 60% of this sum.**

At this juncture, the expropriating authority may also serve a written notice on the owner stating that he has 60 days in which to 'institute legal proceedings for the determination of the compensation' payable. If he fails to sue within this period, he will be deemed 'to have accepted the compensation offer made to him by the expropriating authority'.

If the matter does proceed to litigation and a court (either a magistrate's court or the high court) awards the owner an amount of compensation that is 'equal to or less than' the amount offered to him by the expropriating authority, then 'costs must be awarded' against the owner. These costs must be deducted from the amount of compensation owing to him, leaving only the balance, if any, to be paid to him.

In the light of these provisions, the expropriated owner – who may already have lost both ownership and possession of his property to the State – will need deep pockets to risk resorting to litigation. He will also be given a mere 60 days in which to weigh the prospects of success, find legal representation, and issue summons. In these circumstances, most people will have little choice but to accept whatever amount of compensation the expropriating authority has offered.

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### ***Date of payment of compensation***

Under the Bill, the owner is entitled to the compensation payable from the time possession passes to the expropriating authority, which must then pay 'not less than 80%' of the compensation offered in the notice of expropriation. However, the expropriating authority may also avoid this obligation by 'proposing a later date or dates' for payment. In these circumstances, the owner must either agree to these date(s) or the expropriating authority may apply to the courts for a decision. Given the time and costs involved in litigation, most owners will again have little choice but to agree to payment being deferred. In addition, few owners are likely to receive interest on the amounts owing to them as the relevant (and poorly-phrased) provisions of the Bill seem to exclude this possibility.

### ***The rights of third parties***

The Bill recognises that third parties may have rights in properties targeted for expropri-

ation, and thus allows an expropriating authority to expropriate all the relevant rights under a single notice of expropriation. However, this notice must be served on all those affected and must offer each of them 'just and equitable' compensation. The impact of expropriation varies according to whether the third-party rights in issue are mortgage rights, mining rights, other registered rights (such as servitudes), or unregistered rights, such as leases.

**The Bill allows an expropriating authority to expropriate all third-party rights in the property under a single notice of expropriation.**

*Mortgage rights*

If the property has been mortgaged to a bank to secure a loan, the mortgage is automatically terminated on the date of expropriation, when ownership passes to the expropriating authority 'released from mortgage bonds'. In these circumstances, no compensation may be paid out until the owner and the bank have agreed on how the relevant amount should be apportioned between them, or have obtained a court order on the issue.

Some of these provisions echo the current Act, which also provides for the automatic termination of any mortgage bond when ownership passes to the State. Under the Act, however, there is little danger that the amount of compensation payable (full market value, plus damages for consequential loss) will be less than the amount of the loan. In addition, the Act obliges the State to settle the debt to the bank immediately and then pay the balance to the owner.

The situation under the Bill is different. Since compensation will generally be less than market value, the amount payable could be less than the outstanding loan. In addition, the bank will not be entitled to any payment until it has either reached agreement with the owner on the amount due or has had the issue decided by a court. In combination, these provisions could undermine the banking system. At minimum, they may make it more difficult for prospective home owners to secure mortgage finance in the future.

*Mining and prospecting rights*

A mining or prospecting right granted under the Mineral and Petroleum Resources Development Act (MPRDA) of 2002 is not automatically expropriated at the same time as the land itself. However, there is nothing to prevent the expropriating authority from simultaneously expropriating such a right under the same notice of expropriation. It must, however, serve this notice on the holder of the mining right and provide him with 'just and equitable' compensation.

*Registered rights*

A servitude, such as a right of way to an adjoining property, will continue to exist if it has been registered against the title deeds of the expropriated land. Again, however, the registered right may be expropriated under the same notice of expropriation, provided this is served on the person holding the right and is accompanied by 'just and equitable' compensation.

*Unregistered rights*

All unregistered rights – including the right of a tenant to occupy property under a lease agreement – are 'simultaneously expropriated' on the date that ownership passes to the ex-

**A mining right under the MPRDA is not automatically expropriated, but can also be taken under the same notice of expropriation.**

propriating authority. Again, the notice of expropriation must be served on the tenant (or other rights holder), who is entitled to 'just and equitable' compensation. If the lease is nevertheless allowed to continue, the tenant must pay rent to the owner until the date possession passes and thereafter to the expropriating authority.

**All unregistered rights, including lease agreements, are 'simultaneously expropriated' on the date that ownership passes to the expropriating authority.**

***Expropriation by the minister of public works***

The Bill gives the minister of public works an extraordinarily wide power to expropriate property 'upon request by an organ of state'. In the alternative, the Bill gives him an additional power to expropriate 'for a purpose connected...with his mandate'. Since his mandate is defined as 'including the provision and management of the accommodation, land and infrastructure needs of an organ of state', this power is also extensive.

In this brief chapter of the Bill, property is somewhat differently defined as 'meaning land and movable property related to such land, including a right therein'. The minister is obliged to 'pay compensation which is just and equitable', but can reclaim the amount from the organ of state in question, to which ownership passes on the date of expropriation.

***Trumping effect of the Bill***

According to a memorandum on the objects of the Bill, part of its purpose is to 'ensure uniformity in the way that organs of state undertake expropriation'. This is important, the memorandum adds, because there is such 'an array of authorities' with the power to expropriate under different laws. What this also means, however, is that the Bill will override any limitations on expropriation now contained in other statutes.

In keeping with this objective, the Bill requires all future expropriations to be carried out in accordance with its core provisions, particularly those dealing with compensation. Another clause explicitly states that the Bill's provisions must 'prevail in the event of a conflict' between it and any existing law dealing with expropriation.

**Ramifications of the Bill**

The Bill seeks to empower all organs of state to expropriate land and other property whenever this is necessary, in their view, to 'redress the results of past racial discriminatory laws'. Expropriated owners will be under great pressure to accept the compensation offered by the State, which will generally be less than market value. Damages for consequential loss will no longer be payable, even though expropriation is a drastic measure which places an inordinately heavy burden of redress for past societal wrongs on the shoulders of particular individuals. If justice is to be done to those affected, the full extent of their consequential losses needs to be taken into account, not disregarded. Instead, the Bill makes it possible for the State to acquire all manner of assets at bargain basement prices and irrespective of the great hardship this may cause.

In addition, though ownership and possession may pass very swiftly to the State after the notice of expropriation has been served, payment of the compensation due could often be

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delayed. Banks holding mortgages over property which is expropriated will also be at risk, as the compensation payable may not be enough to pay off outstanding loans.

The Government claims that the Bill is needed to speed up land reform, but this is a tired and unconvincing excuse that brushes over many inconvenient truths. In fact, only 8% of South Africans want land to farm; at least 73% of land reform projects have failed; and the

**The Expropriation Bill will by no means be confined to farmland. Nor will it apply solely to white South Africans.**

Government has already spent billions of rands on taking hundreds of farms out of production with little benefit to anyone. Such pointless waste must stop, not be given further impetus.

Mr Nxesi now adds that the Expropriation Bill is needed to speed up the infrastructure programme. But this has stalled because of other policy mistakes, including a quota-driven affirmative action policy that has left many state

entities without the experience to manage large projects.

However, in putting forward this flawed rationale, Mr Nxesi implicitly acknowledges that the Expropriation Bill will by no means be confined to farmland. Many people outside the agricultural sector have long tended to believe that the Bill would not affect them, but this is an illusion. Others may think that the risk of expropriation applies solely to white South Africans, but this too is a fallacy.

The recent gazetting of a land claim over much of Pretoria illustrates the point. Chief Victor Lekhuleni has claimed some 25 000 hectares of land from which, he says, his community was forcibly removed between 1958 and 1962. The area in question runs from Lynnwood and Silver Lakes in the south to Eersterust in the north. It includes not only farms but also businesses, shopping centres, residential areas, schools, hospitals, and the whole of Mamelodi township. In this instance, Mr Lekhuleni is willing to negotiate leases with farm owners and others once his claim has been confirmed. However, other claimants may want the land itself – which the State will then be able to acquire on the cheap using its new powers under the Bill.

Under the re-opened land claims process, which runs until June 2019, the Government expects some 379 000 new land claims to be lodged. Many seem likely to be put forward by chiefs; and could incorporate large swathes of land. If the Bill is adopted in its current form, the result will be a debilitating uncertainty in all affected areas. No one will want to buy property that is under claim – as experience in Pretoria with Mr Lekhuleni's claim already shows. Even if buyers are willing to proceed, few banks will want to provide mortgage finance when loans might ultimately remain at least partially unpaid. This in itself will be enough to throw the property market into disarray.

Overall, the Bill is a draconian measure giving all state entities the power to take from farmers, miners, firms, and ordinary people their most important assets: often their sole assets, built up over a lifetime of endeavour. In return, less than adequate compensation will be paid. Moreover, once the Bill has been put on to the Statute Book, there will be little to prevent

**Overall, the Bill is a draconian measure giving all state entities the power to take from farmers, miners, firms, and ordinary people their most important assets.**



hundreds of state entities from resorting to it ever more often — and without having to wait for the trigger of a land claim.

The overall economic ramifications of the Bill are impossible to foresee because the measure applies to virtually all property rights and trumps all existing laws touching on expropriation. Inevitably, the Bill will have many consequences that cannot be anticipated. However,

**The likely economic costs are bad enough in themselves. Worse still is the Bill's unconstitutionality and the ANC's persistent refusal to acknowledge this.**

the threat to property rights implicit in the Bill will clearly:

- undermine home ownership;
- deter investment, growth, and job creation;
- contradict the National Development Plan (NDP), still supposedly the Government's 'overriding' policy blueprint; and
- make it harder still to counter unemployment, poverty, and inequality.

The likely economic costs are bad enough in themselves. Worse still is the Bill's unconstitutionality and the ANC's persistent refusal to acknowledge this. The crucial

problem here is a simple one. The Bill empowers the State to take property upfront by notice of expropriation, leaving it to those affected to seek redress in the courts thereafter – if they can afford this. But this kind of 'self-help' is barred by the common law and is clearly in conflict with the Constitution.

**Unconstitutionality of the Bill**

The common law recognises the right to property as a core element of individual liberty. It thus bars the State from simply seizing property – even that suspected of being linked to serious crimes – without first obtaining a court order in the form of a search-and-seizure warrant. In similar vein, the common law prevents a landlord (whether a state entity or a private individual) from simply evicting a tenant in arrears with rent, instead requiring that the owner first obtain a court order.

As these rules show, the common law protects individuals against unauthorised takings of their property. This protection is all the more important when it is the State that seeks to act in this way, for the State is a bearer of power wholly disproportionate to the puny strength of the subject.

The 1996 Constitution thus strengthens common-law protections in three ways. First, the property clause (Section 25) lays down a number of conditions which must be met before any expropriation can be valid. Second, another clause (Section 34) guarantees access to court, saying that legal disputes must be 'resolved by the application of law in a fair public hearing before a court'. In addition, a third clause (Section 26) bars the State from evicting a person from his home without a court order expressly allowing this.

The Government claims the 2015 Bill will bring the current Expropriation Act of 1975 into line with the Constitution, but this is simply not true. The unconstitutional Bill should thus be abandoned and replaced by a new Expropriation Amendment Bill that is fully compliant with the Constitution.

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### **A constitutionally-compliant alternative**

A constitutionally-compliant alternative to the Bill can easily be crafted by amending the current Expropriation Act of 1975 in three key ways.

The first amendment would give the minister of public works the power to expropriate 'in the public interest' as well as 'for public purposes'. In this way, both constitutional criteria would be incorporated into the Act.

The second amendment would insert into the Act's provisions on compensation the four discount factors listed in the Constitution. On this basis, the compensation payable on expropriation would be determined on the basis of:

### **A constitutionally-compliant alternative can easily be crafted by amending the current Expropriation Act in three key ways.**

- market value, plus
- the four discount factors, these being (as earlier noted):
  - the current use of the property
  - the history of its acquisition
  - the extent of any direct state subsidy in its acquisition or capital improvement, and
  - the purpose of the expropriation; plus
- damages for any consequential loss resulting from expropriation; and

- an appropriate additional percentage of the total sum due as a *solatium* or solace for the loss of the property expropriated.

This second change would bring the compensation clause into line with the Constitution, which says that compensation on expropriation must be determined in the light of all the relevant circumstances, including the ones it expressly lists. Given this wording, there is no reason to exclude the last two factors, which already form part of the current Act and should be retained in the interests of justice.

The third amendment would acknowledge all the Constitution's requirements for a valid expropriation. It would thus prevent the State from giving notice of expropriation until it has obtained a court order confirming:

- that the proposed expropriation is authorised by a law of general application and is not arbitrary;
- that it is objectively in the public interest or for public purposes;
- that the compensation proposed is indeed just and equitable, reflecting a proper interpretation and application by the State of all the factors identified above; and
- that no person will be evicted from his home as a result of an expropriation without a court order expressly allowing the eviction and perhaps requiring the provision of suitable alternative accommodation.

### **The third amendment would prevent the State from giving notice of expropriation until it has obtained a court order confirming the constitutional validity of the expropriation.**

This third change would bring the current Act fully into line with the Constitution by giving appropriate recognition to Section 25 (the property clause), Section 34 (the right of access to court), and Section 26 (the housing clause with its guarantee against eviction).

## **Expropriation and the national democratic revolution**

The Government is not really seeking to cure the unconstitutionality of the current Act, for every version of the Expropriation Bill it has put forward since 2008 has been just as unconstitutional as the 1975 statute. Nor is its true objective to speed up land reform or the provision of new infrastructure. Rather, the real aim of the ruling tripartite alliance – the ANC, the Congress of South African Trade Unions (Cosatu) and the South African Communist Party (SACP) – is to use expropriation to advance the national democratic revolution (NDR) in its second and more radical phase.

### **The real aim of the ruling tripartite alliance is to use expropriation to advance the national democratic revolution in this second and more radical phase.**

Both Cosatu and the SACP describe the NDR as providing ‘the most direct path’ to socialism and then communism. The ANC is more circumspect about overtly embracing this goal, but has nevertheless recommitted itself to the NDR at every one of its five-yearly national conferences. In pursuing the NDR, one of the ruling party’s key objectives, also regularly reaffirmed, is the ‘elimination of apartheid property relations’. However, the word ‘apartheid’ here is essentially a red herring. Replace it with the word ‘existing’ and the real meaning of this goal becomes apparent.

Private property rights stand in the way of the comprehensive state ownership and control that is the hallmark of a socialist (and communist) society. Property rights also underpin investment, growth, and individual prosperity; and provide an essential foundation for economic independence and political freedom. This is what made the barring of black South Africans from the ownership of land, houses, and other property in the apartheid era so heinous. Hence, a key purpose of the struggle against National Party rule was not only to end racial discrimination but also to extend to black people the property rights (and other civil liberties) that whites enjoyed.

Black property ownership has in fact been steadily growing since 1975, when a 30-year leasehold option was introduced for township houses. This was soon replaced by 99-year leasehold, and then in 1986 by freehold rights. Today, more than 7.6m Africans own their own homes, as do close on 1m ‘coloured’ and Indian people and 1.1m whites. Since 1991, when the National Party government repealed the notorious Land Acts, black people have bought an estimated 2m hectares of commercial farmland on the open market, without the intervention of the State.

The most recent research into black ownership of the top 100 companies listed on the Johannesburg Stock Exchange puts this at 23% at minimum (some 16% of relevant shareholdings still need to be assessed) – and at 39% on the Government’s own methodology. Overall, the net value (excluding debt) of the private assets owned by South Africans in 2011 was R2.9bn among Africans and R4.4bn among whites.

**Property rights also underpin investment, growth, and individual prosperity; and provide an essential foundation for economic independence and political freedom.**

Though property ownership is still racially skewed, black ownership of land, houses, and other assets has thus been growing steadily for many years. To accelerate this process, the country needs an annual average growth rate of 6% of gross domestic product (GDP), accompanied by an upsurge in investment and employment. African home ownership also needs to be formalised in many instances through the issuing of proper title deeds, which would help

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unlock the value of these houses. In addition, some 17m Africans living on roughly 16.5m hectares of communally-owned land in the former homelands need individual title to the plots they use, which again would help to bring dead capital to life.

Instead, however, economic growth is being undermined and the property rights of all South Africans are being put at risk. The Bill is but the latest salvo in a sustained barrage against property rights, which includes:

- the vesting of all water and mineral resources in the State;
- the re-opening of the damaging land claims process;
- the introduction of a state official (the valuer general) to decide the value of all property targeted for land reform;
- the mooted Regulation of Land Holdings Bill, which will bar foreign ownership of farmland and prevent any commercial farmer from owning more than 12 000 hectares of land;
- the '50:50' proposal, which will see the effective expropriation of 50% of all farms for the supposed benefit of long-serving farmworkers; and
- the misleadingly named Promotion and Protection of Investment Bill of 2013, under which virtually all property 'used for commercial purposes' is vulnerable to expropriation and could (on the initial wording of the Bill) be taken into the 'custodianship' of the State without any compensation being payable at all.

The agricultural sector is currently the most at risk. However, given the objectives of the NDR, the threat to property rights is unlikely to stop there. In addition, experience in Zimbabwe shows just how much is at stake. There, white farmers were the main target of the orchestrated and violent land invasions that began in 2000, but the effect was to bring about the speedy collapse of one of Africa's most developed economies. By 2008, GDP had virtually halved, hyperinflation was running at billions of percent a year, and millions of Zimbabweans had fled the country. Today the proportion of Zimbabweans employed in the formal sector has dropped to around 10%.

Property rights matter, as the ANC and its communist allies well know. That is why the tripartite alliance wants to remove them – because they limit state power. That is also why these rights need to be respected. Property rights should not be made subject to a Bill that is not only unconstitutional but also makes it quick and cheap for all organs of state to take ownership and possession of ever more private property. The more this process unfolds, the more South Africans of every race will be disempowered and left dependent on an increasingly callous and overbearing State.

— **Anthea Jeffery**

**\* Dr Jeffery is Head of Policy Research at the IRR**

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