South African Institute of Race Relations NPC
Submission to the Department of Public Works
regarding the
Expropriation Bill of 2013
Johannesburg, 30th April 2013

Introduction

The Expropriation Bill of 2013 is better than its 2008 predecessor in one key way, for it allows the courts to decide the compensation payable for expropriated property. This is a major advance. In many other ways, however, the Bill remains as worrying as before.

The South African Institute of Race Relations (the Institute) thus urges the Department of Public Works to withdraw the Expropriation Bill of 2013 (the Bill) and instead to bring the Expropriation Act of 1975 (the Act) into line with South Africa's Constitution via the simple amendments outlined below (and further described in Appendix 1).

The Institute has always condemned the race discrimination which unjustly restricted African land ownership prior to 1991, and which underpinned the forced removal of millions of black people by the National Party government. It also supports constructive initiatives to redress the historical injustice regarding land and to bring about a process of land reform which is suited to the country's needs and plays a significant role in building the success of African farmers. This makes the Institute all the more concerned at the negative impact the Bill is likely to have on progress in land reform.

A key purpose of the Bill is to speed up land reform. However, the main obstacle to success in this regard is not the willing seller/willing buyer principle the Bill seeks to circumvent but rather a lack of capacity within the Department of Rural Development and Land Reform. In addition, between 50% and 90% of land reform projects implemented to date have failed, largely because the Government has omitted to provide adequate support to emergent farmers. If land reform is now to be speeded up via expropriation – rather than by addressing the key obstacles to its success – the result (as Tozi Gwanya, then director general of land affairs, warned in 2007) will be more 'assets dying in the hands of the poor'.

In providing a supposed 'quick fix' that bypasses the real challenges, the Expropriation Bill is likely to be more of a hindrance than a help to successful land reform. In addition, the Bill governs not only land and other immovable property but also 'rights in or to property', along with all types of movable property. It thus paves the way for any organ of state, at national, provincial, and municipal levels of government to expropriate livestock and farming implements, residential homes, business premises and equipment, mines and mining licences, patents, and shares in companies whenever this is considered to be in the public interest.

Moreover, the Bill empowers the State to take ownership and possession of any such property simply by notice to the expropriated owner. Though compensation will be payable, this is

likely to be less than market value or consequential loss suffered. In addition, no compensation will be payable until its amount has either been decided by the State or determined by the courts. Hence, expropriated owners will either have to accept what the State decides or wait long years for courts with crowded rolls to make decisions. This means that the option of applying to court to decide a different amount of compensation will in practice be confined to those with deep pockets – the relatively few who, despite the loss of their property to the State, can afford the cost of lengthy litigation with little guarantee of success.

The Bill is a draconian measure giving all state agencies the power to take from miners, farmers, 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 provided. No matter how sparingly the Government may now intend to use the measure, once it has been put on to the Statute Book there will be little to limit state agencies from resorting to it ever more often.

The mere risk of this will be enough unsettle the property rights of all South Africans. This in turn will deter investment, undermine already faltering growth, and make it harder still to overcome poverty and inequality.

The contents of the Bill

More scope for expropriation

Though the Bill is modelled on the current Act, the Bill greatly expands the scope for expropriation, increasing the likelihood that the State will increasingly resort to this drastic measure. The scope for expropriation is widened under the Bill in three ways:

- the Bill follows the Constitution in sanctioning expropriation 'in the public interest'; [Section 3, Bill]
- the Bill extends the minister's power to expropriate to all organs of state [Section 1]; and
- the Bill enables a host of juristic persons to seek expropriation on their behalf and for their benefit. [Section 4, Bill]

Expropriation 'in the public interest'

Under the current act, property may be expropriated only 'for public purposes'. By contrast, the Bill allows expropriation both for public purposes and 'in the public interest'.

In allowing expropriation 'in the public interest', the Bill echoes the property clause (section 25) in the Constitution. Section 25 says that the public interest includes 'the nation's commitment to land reform and to reforms to bring about equitable access to all South Africa's natural resources'. The section also states that its provisions extend to property other than land. This suggests that the public interest may encompass bringing about more equitable access to property of various kinds, and that the criterion of 'public interest' may

readily be considered satisfied.

The Government may believe that this will be advantageous in speeding up the redistribution of wealth and income from richer to poorer South Africans. However, even if all the wealth within the country could be shared on an equal basis among all South Africans, there would not be enough of it to lift people out of poverty. There is no alternative, thus, but to focus on growth as well as redistribution. But the inevitable consequence of the Bill is that growth, investment, and job creation will be undermined to the detriment of all South Africans – and particularly the poor.

All organs of state empowered to expropriate

The current Act vests the power to expropriate in the minister of public works. By contrast, the Bill gives this power not only to the minister but, implicitly, also to any 'expropriating authority', defined as 'the executive authority of a national or provincial department, the municipal council of a municipality', or 'an organ of state'. [Section 1, Bill] The Bill thus extends the power to expropriate to 'any…functionary or institution exercising a power...in terms of the Constitution...or performing a public function in terms of any legislation'. [Section 239, Constitution of the Republic of South Africa, 1996]

Since many more government agencies will be empowered to expropriate whenever they consider this to be 'in the public interest', expropriation is likely to become more common, with all the negative effects outlined above.

Expropriation for the benefit of juristic persons

The Bill also gives a host of juristic persons the power to have both movable and immovable property expropriated by the State on their behalf and for their benefit. [Section 4, Bill] Again, this increases both the scope for expropriation and the likelihood of its occurring.

Equivalent provisions in the current Act are limited. The Act allows a restricted range of juristic persons (universities, other educational institutions, and bodies such as the Atomic Energy Board, for instance) to request the minister of public works to expropriate land and other immovable property for their benefit, but only in narrow circumstances. In particular, a juristic person must show that it 'reasonably requires [the land] for the attainment of its objects', and that 'it is unable to acquire it on reasonable terms'.

By contrast, the Bill extends the power to request expropriation to any juristic person subject to the provisions of the Public Finance Management Act of 1999 or its municipal counterpart. All that such a juristic person need show is that 'it reasonably requires property...in the public interest and that it has failed to reach agreement with the owner for the acquisition of the property'. In addition, the power to expropriate on behalf of juristic persons is extended to both movable property and rights in property.

Again, this greatly expands the scope for expropriation, especially as juristic persons will no longer be required to show an inability to acquire the property in question 'on reasonable terms'. These changes are so wide-ranging as to make their consequences impossible to predict. What is certain is that property rights will be further undermined to the detriment of all.

Restrictions on compensation

Under the Bill, the amount of compensation is likely to be less than market value and consequential loss suffered, while payment could be long delayed and the Government also has discretion to provide compensation in a form other than cash.

Amount of compensation

Under the Bill, market value is a factor in determining compensation, but must also be weighed against other considerations. [Section 13, Bill] The Bill's list of relevant factors, echoing the property clause in the Constitution, includes: [Section 13(1), Bill]

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

The Bill expressly states that the absence of consent on the part of the expropriated owner to the taking of his property may not be taken into account in determining the amount of compensation due. [Section 13(2)(a), Bill] It also says that the compensation paid must be 'just and equitable', and must strike 'an equitable balance between the public interest and the interests of the expropriated owner…having regard to all relevant circumstances'. Since these criteria are broad, the expropriating authority will have a large measure of discretion in applying them.

In addition, the listed factors do not include damages for consequential loss suffered, a measure of damages to which the expropriated owner is expressly entitled under the current Act. Since the list in the Bill is not a closed one, a court could still take account of consequential loss in deciding a fair amount of compensation. However, there is no right to this under the Bill, and it remains uncertain how much weight the courts would attach to this factor. This too is unfair to the expropriated owner.

Time of payment

Under the Bill, the expropriating authority can avoid paying 80% of the compensation due when it takes possession of the property simply by 'proposing a later date' for payment in its notice of expropriation. [Section 18(b), read with Section 9(4)(f), Bill] Moreover,

compensation only 'becomes payable on the date when the amount of compensation has been determined by agreement between the expropriating authority and the claimant, or approved or determined by court'. [Section 18(1), Bill]

This suggests that the longer the owner objects to the amount of compensation offered, the longer he will have to wait for any payment to become due. Though he can turn to the courts to decide the amount of compensation, court rolls are notoriously full and it could take two to three years for the matter to be resolved – and even longer if either party is given leave to appeal against an initial judicial ruling.

This factor, coupled with the high costs of litigation, is likely to put great pressure on expropriated owners to accept whatever compensation is offered by the State, no matter how inadequate. For the alternative under the Bill may be to languish for years without either the property or any compensatory payment for it. This is intrinsically unjust and will add significantly to the damaging ramifications of the Bill.

The Bill also limits the interest that might otherwise be due by stating that interest 'becomes payable only after the amount of compensation has been determined and at the time when payment of the last outstanding portion of compensation is made'. [Section 18(3), Bill] Since no payment will be outstanding thereafter, this wording suggests that interest is unlikely ever to be payable. This too will unfairly penalise expropriated owners, especially if there are significant delays from the time the expropriating authority takes possession to the time that compensation is paid.

Manner of payment of compensation

The Bill empowers the expropriating authority to decide 'the manner of payment of compensation', [Section 22(1), Bill] whereas no equivalent provision is to be found in the current Act. The Bill's wording makes it possible for the State to decide on a manner of payment (the transfer of government bonds, for example) other than cash. Aggrieved expropriated owners will now be able to approach the courts for relief in this regard, which is a great improvement on the 2008 bill. In practice, however, this remedy will again be available solely to those with the financial means to mount such a court challenge. In combination with other disturbing features of the current Bill, this is likely to add to its damaging consequences.

Application to court

Unlike its 2008 predecessor, the Bill allows 'a party to an expropriation' – meaning either the State or an expropriated owner – to approach a court to decide or approve either the amount of compensation, or the timing or manner of its payment. The use of the word 'or' suggests that only one of three issues may be contested before the courts, but not all three. However, the Bill also states that these provisions do not 'preclude a person from approaching a court

on any other matter relating to the application of this Act'. [Section 22, Bill]

This wording indicates that an expropriated owner may also ask the courts to determine whether constitutional requirements for expropriation have been met. Under the property clause, 'no one may be deprived of property' save in specified circumstances, while the onus lies *on the State* to prove that: [Section 25 of the Constitution, emphasis supplied]

- the expropriation is not arbitrary;
- it is objectively in the public interest; and
- the compensation provided is indeed just and equitable.

The capacity to approach the courts for relief is broadly stated and is unlikely to restrict the issues raised or remedies sought. This is a major advance on the 2008 bill, for which the Department of Public Works deserves full credit. However, the onus should lie on the State to obtain court confirmation of the constitutionality of a proposed expropriation *before* any notice of expropriation is issued, and before either ownership or possession can pass to the State.

Ramifications of the Bill

The Bill will unsettle rights to property of all kinds, ranging from commercial farm land and residential homes through business premises and movable assets to patents, mines and mining licences, and shares in companies. Any such property will become subject to expropriation 'in the public interest' by all state organs and at the instance of various juristic persons. Compensation is likely to be less than market value or consequential loss suffered. In addition, the option of approaching the courts for relief will in practice be restricted to those expropriated owners who have the means to engage in protracted litigation even though they may already have lost possession of the property which earlier provided them with their principal source of livelihood.

The ramifications of the Bill are so great that its likely consequences are difficult to foresee. All that is certain is that the risk of doing business in the country will increase and that foreign investment (including the portfolio inflows needed to help finance South Africa's large current account deficit) may become more difficult to attract. Declining investment will obviously have an impact on the growth rate and therefore on levels of unemployment and poverty.

Specific consequences for three significant sectors of the economy – agriculture, mining, and the financial sector – are also apparent.

Agriculture

In order to redress a historical injustice, the Government plans to transfer 30% of white farmland, amounting to some 25.8m hectares, to Africans by 2014. The deadline for

achieving this target, initially set at 1999, was later revised to 2014. Given financial and operational constraints, the Government has since said that 2025 seems 'a more realistic deadline for the realisation of land reform objectives'. [South African Institute of Race Relations, *2010/11 South Africa Survey*, Johannesburg, 2011, p614]

By March 2011 some 2.8m hectares of land had been restored to land claimants who had previously been dispossessed of it under racial laws dating back to 1913. By March 2012, the amount of land redistributed had risen to some 4m hectares. This gave a total of 6.8m hectares transferred, leaving around 19m hectares still to be transferred to meet the 30% target. At its policy conference in Mangaung in December 2012, the ruling African National Congress (ANC) thus resolved to 'replace the willing buyer/willing seller with the "just and equitable" principle in the Constitution immediately where the State is acquiring land for land reform purposes'. The ruling party also decided to 'expedite the promulgation of the Expropriation Act'. In combination, these resolutions suggest that the Government will no longer negotiate for the purchase of farms it wants for land reform, but will instead expropriate them in return for as much (or little) compensation as it considers equitable. [ANC, 53rd National Conference Resolutions, http://www.anc.org.za/docs/res/2013/resolutions53r.pdf]

However, according to organised agriculture:

- there is more land available on the open market at reasonable prices than the Gvernment can buy;
- the State has on average been paying significantly less than market prices for land acquired for land reform purposes; and
- delays in land reform are large due to poor administration and a lack of capacity in the Department of Rural Development and Land Reform (DRDLR).

In addition, between 50% and 90% of all land reform projects have failed, the recipients of formerly successful farms often failing to produce any marketable surplus. [*Business Report* 29 June 2011] Such failure stems from a lack of farming experience, a shortage of capital, inadequate mentoring and support, and the difficulty of joint decision-making in the many instances where land has been transferred to communities rather than individuals. It also means (writes journalist Stephen Hofstatter) that the Government, 'by its own admission, has spent billions in taxpayers' money to take hundreds of farms out of production, costing thousands of jobs and billions more in lost revenue'. [*Business Day* 12 November 2009]

In November 2007 the then director general of land affairs and former chief land claims commissioner, Tozi Gwanya, expressed deep concern about what was happening to land after it had been transferred. He also warned that the current targets for land delivery were too steep, saying: 'If we are to give another 25% of our agricultural land to the previously disadvantaged, we must ensure they can participate in the commercial agricultural economy'.

He urged that new targets be set and that these should reflect not simply the quantity of land transferred but also the number of jobs created, the amount of income earned by beneficiaries, and the productivity of land following transfer. There was little point in speeding up land reform, he said, if the country then 'ended up with assets dying in the hands of the poor'. [Anthea Jeffery, *Chasing the Rainbow: South Africa's Move from Mandela to Zuma*, South African Institute of Race Relations, Johannesburg, 2010, p291]

Mr Gwanya's deputy, Mdu Shabane, added that some beneficiaries of land reform were now 'worse off than before because they lack the skills and resources to unlock the potential of the soil in a profitable and sustainable manner... We will be wasting a precious resource by indiscriminately settling people on arable land simply for the sake of transformation'. [John Kane-Berman, 'Bad-faith Expropriation Bill not grounded in South Africa's land realities', *Fast Facts*, No 5, May 2008, p7]

Similar concerns have since been voiced by Stone Sizani, chairman of the portfolio committee on rural development and land reform. In February 2010 Mr Sizani said it was 'encouraging' that the Government was now budgeting to provide increased financial support to land reform beneficiaries after farms were handed over. This was 'a far cry' from what had happened in the past, when targets for the transfer of land were 'based on the heart – not on facts'. The Government also now sought 'a more pragmatic approach', he went on, for it wanted to focus on job creation, improved livelihoods, and ensuring transferred farms produced food. It also wanted to avoid 'throwing money down the drain by buying more farms that aren't used productively'. [*Business Day* 18 February 2010]

Also relevant is the extent of the demand for farming land. Commentators have previously warned that the 30% target set by the Government might overstate demand, for South Africa is urbanising and many people are more interested in obtaining jobs in towns and cities rather than in gaining land to farm. The minister of rural development and land reform, Gugile Nkwinti, recently recognised the salience of this concern, for in April 2013 he acknowledged that 71 000 out of 76 000 potential beneficiaries of land restitution had chosen financial compensation instead of land. Said Mr Nkwinti: 'We thought everybody when they got a chance to get land, would jump at it. Now only 5 856 have opted for land restoration.' This, he said, was contrary to the assumptions used when policy makers set their land transfer targets. Dynamics had changed. People had become urbanised, they wanted money because of poverty and unemployment, and they had become 'de-culturised' in terms of tilling land. 'We no longer have a peasantry; we have wage earners now.'

The Bill ignores the important reservations thus expressed by senior figures in the ANC and the DRDLR. Instead, it suggests a determination to turn expropriation into the State's principal instrument for land reform, irrespective of the need for this drastic remedy or its likely negative consequences.

Mining

Under the Mineral and Petroleum Resources Development Act (MPRDA) of 2002, mining companies holding 'old-order' rights to prospect or mine were entitled to seek conversion of their old-order rights into 'new-order' licences. They were also given the right to seek compensation if they could prove that their old-order rights had been expropriated. Though the Constitutional Court has recently ruled that no blanket expropriation of old-order mining rights took place when the MPRDA came into effect in May 2004, it expressly left open the question whether a particular holder of such rights might be entitled to claim compensation in the particular circumstances of his case. [*Agri South Africa* v *Minister for Minerals and Energy*, Case CCT51/12, Constitutional Court of South Africa, 18 April 2013, http://www.saflii.org/za/cases/ZACC/2013/9media.pdf]

However, if this Bill is adopted, its provisions will trump those of the MPRDA relating to the compensation payable on expropriation. This may make it more difficult for a mining company claiming such compensation to claim also for 'actual loss or damage' suffered on expropriation. For though the MPRDA recognises this as one of the factors relevant to the amount of compensation payable on expropriation, the Bill does not.

The MPRDA and its attendant Mining Charter have already had the unintended consequence of curtailing investment in the mining sector, notwithstanding the great value (estimated at R2.5 trillion) of South Africa's mineral resources. This in itself has been negative for growth and jobs in mining. Since January 2008, electricity shortages have also constrained mining investment (and sometimes also mining operations), while rising electricity and other input costs, coupled with labour unrest and declining commodity prices have put pressure on the profitability of various mines. In these circumstances, the country would be ill-advised to alienate present and potential mining investors by creating yet more doubts as to the sanctity of property rights in South Africa.

The banking sector

The Bill echoes the current Act in stating that any registered mortgage bond over property expropriated is automatically terminated on the date when ownership passes to the State. In these circumstances, the compensation payable to the owner must be divided between the owner and the bank holding the mortgage. [Section 19, Bill]

Under the Act, where compensation is based on market value together with damages for any consequential loss and a further *solatium*, the mortgage holder is unlikely to be prejudiced in a material way. Under the Bill, however, compensation is likely to be less than market value, and no damages for consequential loss will be provided. This means that the compensation payable to banks on expropriation might well be less than the amount they are owed on the property. Banks with major mortgage exposure to the remaining 19m hectares of land to be transferred – much of which could be transferred via expropriation if the Bill becomes law –

could find their profitability under pressure. This could undermine the high reputation of South African banks in international circles. It could also make it more difficult for the banking sector to fulfil its objectives (under the Financial Sector Charter) to help fund low-cost housing and black economic empowerment transactions.

No Need for the Expropriation Bill of 2013

The overall 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 which cannot be anticipated. All that is clear is that, by undermining property rights in this comprehensive way, the Bill is likely to:

- deter investment, growth, and job creation;
- make it harder to implementt the National Development Plan (NDP), supposedly the Government's 'overriding' policy blueprint; and
- undermine the ruling party's objectives of reducing the 'triple evils' of poverty, inequality, and unemployment.

In addition, there is no need for the Government to adopt this Bill. Though the historical injustice regarding land ownership needs to be addressed in a way that brings lasting benefits to emergent black farmers and the country as a whole, the Bill will hinder rather than help this process. Moreover, if the Government wishes to bring the current Expropriation Act of 1975 into line with the Constitution, this can be done through a few simple amendments.

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, this Constitutional criterion would be incorporated into the current Act.

The second amendment would add, to the factors relevant to compensation under the Act, the four 'missing' factors found in section 25(3) of the Constitution. On this basis, the compensation payable on expropriation would be determined on the basis of:

$ market value, plus

$ the four other factors listed in section 25(3) of the Constitution, ie:
  - the current use of the property
  - the history of its acquisition and use
  - the extent of direct state subsidy in its acquisition and beneficial capital improvement, and
  - the purpose of the expropriation;

$ damages for 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.

Amending the relevant section in the current Expropriation Act (Section 12) would be fully

in line with section 25 of the Constitution, which says that compensation must be determined in the light of *all* the relevant circumstances. This means there is no reason to exclude the last two factors, which already form part of the current Act and should thus simply be retained.

The third amendment would acknowledge all the Constitution's requirements for 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 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 in all the relevant circumstances.

This 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).

(A draft amendment bill with these changes is enclosed as Attachment 1.)

South African Institute of Race Relations NPC **30th April 2013**

Appendix 1: South African Institute of Race Relations NPC

Proposed Alternative Bill to Amend the Expropriation Act of 1975

EXPROPRIATION AMENDMENT BILL OF 2013

To provide for the amendment of the Expropriation Act of 1975 so as to bring its provisions into keeping with the Constitution of the Republic of South Africa of 1996 and to provide for matters connected therewith.

WHEREAS the Constitution of the Republic of South Africa, 1996 –

$provides that 'no one may be deprived of property except in terms of law of general application' and that 'no law may permit arbitrary deprivation';

$states that 'property may be expropriated only…for public purposes or in the public interest' and subject to the payment of 'just and equitable compensation, reflecting an equitable balance between the public interest and the interests of those affected'; and

$guarantees that 'no one may be evicted from their home without an order of court made after considering all the relevant circumstances'; and

WHEREAS the Expropriation Act of 1975 was enacted before the Constitution was adopted and does not fully reflect these relevant constitutional provisions,

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

Section 1. Addition to Definitions

Section 1 of the Expropriation Act of 1975 is hereby amended to include the following definitions: –

"Constitution" means the Republic of South Africa Constitution Act of 1996

"public interest" includes the nation's commitment to land reform and to reforms to bring about equitable access to the Republic's natural resources

Section 2: Power to expropriate

Section 2 of the Expropriation Act of 1975 is hereby amended as follows: –

2. Power of minister to expropriate property for public and certain other purposes and to take the right to use property temporarily. – (1) Subject to the provisions of the Constitution and this Act, the minister may **[subject to an obligation to pay compensation]** expropriate any property for public purposes or in the public interest or take the right to use temporarily any property for public purposes or in the public interest.

Section 3: Confirmation of constitutional validity of proposed expropriation
Sections 2A, 2B and 2C are hereby inserted into the Expropriation Act of 1975: --

Section 2A: Whenever the minister proposes to expropriate property, he must:

(1) give adequate notice of the proposed expropriation to the owner of the property or the holder of a right in the property, in accordance with sub-sections 2C;

(2) specify the amount of compensation he proposes to pay for the expropriated property under Section 12;

(3) seek an order of court confirming that the intended expropriation:

(a) is being effected under a law of general application;

(b) is not arbitrary;

(c) is for public purposes or in the public interest; and that

(d) the amount of compensation proposed under sub-clause 2A(2) is just and equitable in terms of the factors identified in Section 12;

(4) if the property the minister proposes to expropriate is, or includes, a person's home, the court must also, after considering all the relevant circumstances, confirm whether that person may be evicted from his home when the State takes possession of the expropriated property.

Section 2B: The owner of any property or right in property which the minister proposes to expropriate is entitled to attend the court proceedings referred to in sub-sections 2A(3) and 2A(4), and to make representations and adduce evidence on all the matters on which the court must rule.

Section 2C: Any notice of a proposed expropriation must fulfil the following requirements:

(1) It must contain a clear and full description of the property or the right in question, provide detailed information on all matters which are relevant under sub-sections 2A(2), 2A(3), and 2A(4) and be sent by e-mail, fax, and registered post to the owner or holder of the right.

(2) If the whereabouts of the owner or holder of the right is not readily ascertainable by the minister, he must publish once in the *Gazette* and once a week during two consecutive weeks in two different newspapers circulating in the area in which the property is situated an appropriately detailed and complete notice of the proposed expropriation.

Section 4: Notice of expropriation
Section 7 of the Expropriation Act is hereby amended by the substitution for sub-section (1) of the following sub-section (1):

Section 7(1): Once a court has issued the necessary order(s) under sub-sections 2A(3) and 2A(4), the minister may issue a notice of expropriation in accordance with the provisions of this section.

Section 5: Basis for determining compensation

Sub-sections 12(1) and 12(2) of the Expropriation Act of 1975 are hereby deleted and replaced by the following Section 12(1), and the remaining sub-sections of Section 12 are renumbered accordingly: –

12. Basis on which compensation is to be determined. – (1) The amount of compensation to be paid in terms of this Act to an owner in respect of property or a right in property expropriated in terms of this Act, or in respect of the taking, in terms of this Act, of a temporary right to use property, shall be calculated by reference to the following factors: –

(a) the market value of the property, being the amount which the property would have realised if sold on the date of notice of expropriation by a willing seller to a willing buyer;
(b) the current use of the property;
(c) the history of the acquisition and use of the property;
(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property;
(e) the purpose of the expropriation;
(f) an amount to make good any actual financial loss caused by the expropriation; and
(g) an additional ten per cent of the total sum, calculated on the factors listed in (a) to (f), as a *solatium* (solace) for the loss of the property.

Section 6: Short title

This Act shall be called the Expropriation Amendment Act of 2013.

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Though some small additional changes might be advisable, the amendments identified above are the key ones – and the only ones – which are needed to bring the existing Act fully into line with the Constitution.

South African Institute of Race Relations NPC **30th April 2013**