

Press Release

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South African Institute of Race Relations
The power of ideas

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The IRR's Better Expropriation Bill

The Expropriation Bill of 2015, recently put forward by public works minister Thulas Nxesi, (the Nxesi Bill) will make it much harder to build prosperity and overcome past disadvantage by undermining property rights, deterring investment, and choking off growth and jobs, warns the IRR (Institute of Race Relations).

The IRR has thus developed an alternative expropriation bill with many advantages over Mr. Nxesi's one, says Dr. Anthea Jeffery, Head of Policy Research at the IRR.

The IRR's alternative bill deals with all the defects in the current Expropriation Act of 1975. By contrast with the Nxesi Bill, it is also fully in line with the Constitution.

Says Dr. Jeffery: "Like the Nxesi Bill, the IRR's measure allows expropriation 'in the public interest' as well as 'for public purposes'. It also says that market value must be weighed against the four 'discount' factors listed in the Constitution in deciding what is 'just and equitable' compensation." (These discount factors include the history of the property and the extent to which the State has previously funded its purchase.)

Unlike the Nxesi Bill, the IRR's measure also says that:

- the State must obtain a High Court order confirming the constitutional validity of a proposed expropriation – and the adequacy of the compensation proposed – *before* it issues a notice to expropriate any property;
- the compensation payable must also include *damages for consequential loss* resulting from the expropriation, from moving costs to any loss of future income; and
- all the compensation due must be *paid before the State takes ownership* of the property, failing which the notice of expropriation automatically becomes invalid.

Adds the IRR: "The Nxesi Bill omits these safeguards against potential abuse. It is also unconstitutional in empowering the State to take ownership and possession upfront – leaving it to the owner to seek redress in the courts thereafter, if he can afford this.

"The Nxesi Bill thus contradicts even the common-law rules that require the State to obtain a court order (in the form of a search-and-seizure warrant) before it takes property that is allegedly linked to crimes. It also overlooks the extra requirements that have to be met before any expropriation can be valid under the Constitution.

More...

“Worst still, the Nxesi Bill seeks to oust the jurisdiction of the courts by allowing them to adjudicate solely on the compensation offered – and not on the overall validity of the expropriation. It also seeks to limit court review by giving the owner a mere 60 days to sue for additional compensation, failing which he will be ‘deemed’ to have accepted the State’s offer.”

The property rights the Nxesi Bill so fundamentally undermines are also vital to upward mobility. This is why apartheid restrictions on African land and home ownership were among the most damaging aspects of past racial discrimination. Since these restrictions began to crumble in 1975 – and were finally abolished by the National Party government in 1991 – African ownership of houses, land, and other assets has finally been able to grow, and has done so exponentially.

States Dr. Jeffery: “To speed up this process, South Africa need growth at 6% of GDP a year, coupled with an upsurge in investment and employment. Instead, the Nxesi Bill threatens to reverse these gains. Under its provisions, ever more land and other assets will become vested in the State, thus disempowering all South Africans and eroding the property rights essential to individual prosperity and political freedom.

“Anyone who doubts the importance of property rights – and the dangers in allowing the State to undermine them – has only to look north to Zimbabwe, west to Venezuela, and east to North Korea to understand why the Nxesi Bill must be rejected and why the IRR one should be adopted in its stead.”

Download an overview of the IRR’s alternative expropriation bill, plus a more comprehensive version of it [here](#). Both versions are also attached with this press release.

Watch Dr. Anthea Jeffery and Mienke Steytler discuss the IRR's better Expropriation Bill for South Africa securing land rights for all [here](#).

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