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20 August 2026

The Honourable Sindisiwe Chikunga, MP
Minister in the Presidency for Women, Youth and Persons with Disabilities
Republic of South Africa

Dear Minister Chikunga

EXPROPRIATION ACT'S UNDERCOMPENSATION PROVISIONS POSE A THREAT TO THE BEST INTERESTS OF SOUTH AFRICA'S CHILDREN

The Institute of Race Relations (IRR) is an independent public-policy research and advocacy organisation, founded in 1929, which works towards a free, non-racial, and prosperous South Africa founded on individual liberty, equality before the law, property rights, the rule of law, and economic freedom.

We write to urge you, as the member of the national executive specifically entrusted with advancing the interests of South Africa's children, to add your voice to opposition to the threat of undercompensation created by the Expropriation Act 13 of 2024.

Our concern is straightforward. Compensation below the level required substantially to restore an expropriated property owner to the position that he or she occupied before the taking does not affect that owner alone. Where that person has children or other dependants in his or her care, the resulting loss is necessarily carried into the household.

Undercompensation poses an immense risk in terms of the diminishment of the resources with which a parent or caregiver provides a home, food, education, healthcare, transport, savings, and financial security. Where the property taken is itself the family home, the connection is particularly direct. Where it is a business, productive property, savings or another valuable asset, the effect may instead be felt through the destruction or diminution of the economic resources upon which the household depends.

In either case, the constitutional interests of children cannot be treated as incidental to the exercise of the State's expropriation power.

Section 28(2) of the Constitution provides that:

"A child's best interests are of paramount importance in every matter concerning the child."

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It is difficult to conceive of a matter more directly concerning a child than State action which leaves the adult responsible for that child poorer, less secure or less capable of providing for him or her.

This is why the IRR submits that the constitutional problem presented by undercompensation cannot be reduced to a dispute between the State and an isolated property owner. Property ownership is one of the principal means through which families accumulate and preserve the resources required to care for their children. Homes provide shelter and stability. Businesses and productive assets generate income. Property can provide collateral, savings, security against emergencies and something to pass from one generation to the next.

The State's decision compulsorily to take such an asset for less than the amount necessary to restore the owner's position therefore has consequences extending far beyond the title deed.

If a parent owns a home worth R1.5 million and the State compulsorily acquires it while providing only R1 million in compensation, it is not sufficient to say that the parent has received compensation. The family has suffered a compulsory R500 000 loss in its economic position. If that loss means that the parent can no longer obtain an equivalent home, the children in that household have lost housing security through an act of the State.

The same principle applies where an expropriated asset supports the family indirectly. If a business, income-producing property, savings or another legally owned asset is taken for less than the amount required to restore the owner substantially to his or her prior position, the diminished economic security of the parent or caregiver necessarily threatens the material circumstances of the children dependent upon that person.

The IRR therefore believes that the proper standard is one of substantively restorative compensation.

The question should not merely be whether some amount of money has changed hands. It should be whether the person whose property has been compulsorily taken has, as far as reasonably possible, been restored to the substantive economic position that existed before the expropriation.

Where compensation falls materially below that level, the State is not merely acquiring property. It is imposing part of the cost of its chosen public purpose upon the person from whom the property is taken and upon those who depend on that person.

That becomes especially difficult to reconcile with the constitutional best-interests-of-the-child standard where children bear part of that loss.

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The public interest may justify the compulsory acquisition of property in appropriate circumstances. It does not follow that the public interest justifies making the children of the affected owner poorer in order to reduce the amount which the State must pay.

Children do not choose whether property belonging to their parents or caregivers will be expropriated. They do not determine the public purpose for which it will be taken. They have no part in deciding what compensation will be offered. Yet they may suffer the consequences through reduced housing security, diminished household wealth, and a weakened capacity on the part of their parents or caregivers to provide for them.

The existence of those consequences is not cured by the fact that the child is not the registered owner of the property.

Indeed, the threat is wider than individual expropriations. Secure property rights underpin the ability of ordinary people to build the economic resources upon which family security depends. Property can be traded, invested in, improved, used to obtain finance, and preserved as a store of value precisely because the owner can have confidence in the security of his or her rights.

The threat that the State may compulsorily acquire property without substantially restoring the owner's economic position weakens that security.

This has particular consequences for families. Without secure property rights, people are less able to invest with confidence, borrow against assets, build businesses, accumulate savings, and create the wealth through which they support their dependants. The economic security of children is therefore inseparable from the security of the property rights enjoyed by the adults responsible for their care.

For this reason, we do not believe that the appropriate response is merely to develop procedures for mitigating the effects of undercompensation after the principle has been accepted.

The concern lies with the power to undercompensate itself.

A system which permits the State deliberately to leave a property owner materially worse off through compulsory acquisition necessarily creates the possibility that children dependent upon that owner will also be left worse off. That possibility is not peripheral to your portfolio. It goes directly to the constitutional interests you are entrusted to advance.

We therefore respectfully call upon you to:

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1. **Publicly oppose the threat of undercompensation contained in the Expropriation Act**, particularly given its potential to diminish the housing and socio-economic security of children;
2. **Raise the implications of undercompensation for children within Cabinet**, including the incompatibility between weakening the economic position of households through State action and government's obligation to treat children's best interests as paramount;
3. **Support substantively restorative compensation**, so that a person whose property is compulsorily taken is, as far as reasonably possible, restored to the economic position he or she occupied before the expropriation; and
4. **Support legislative reform** to remove the power to impose uncompensated or undercompensated losses upon property owners and the families who depend upon them.

Given the Department of Public Works and Infrastructure's responsibility for the Expropriation Act, we are also forwarding this letter to the Hon. Dean Macpherson, MP, Minister of Public Works and Infrastructure. We do so in the hope that these concerns regarding the best interests of children, as well as the alternative offered by the IRR's **Right To Own Bill**, will be considered jointly by the relevant members of the national executive.

In this regard, we have attached the Right to Own Bill for your consideration. The Bill is intended as a legislative alternative to the Expropriation Act and proceeds from a different principle: that South Africa should strengthen and broaden secure property ownership rather than weaken it. It would require market-value compensation for expropriated property while also seeking to expand secure ownership through measures such as faster township formalisation, the issuing of title deeds, improved land registration, and the transfer of suitable underutilised state land into private ownership. The purpose is not merely to protect existing owners, but to extend the security, independence, and economic opportunity that come with ownership to far more South Africans.

That approach is directly relevant to the interests of children. Secure ownership strengthens the ability of parents and caregivers to build assets, access finance, invest, save, and provide greater stability for those who depend upon them. In our view, public policy should seek to enlarge that security rather than create a power by which the State can diminish it through undercompensated expropriation.

Minister, the Expropriation Act cannot be assessed only as a matter of property law or the relationship between government and individual owners. Its consequences reach into homes and families.

The ability securely to own what is yours is fundamental to the ability to build, invest, save and provide for others. When the security of ownership is weakened, the effects are ultimately borne not only by those who hold property, but by those who depend upon them.

For countless South African children, their housing and material security depend directly upon the socio-economic position of the adults in whose care they are. A State power capable of deliberately diminishing that position through undercompensated expropriation therefore poses a direct threat to their interests.

As Minister responsible for children, you have a particular responsibility to give those interests a voice within government.

We urge you to exercise that responsibility by opposing the Expropriation Act's threat of undercompensation and making clear that the State should not pursue public purposes by imposing uncompensated losses upon families and the children who depend on them.

We would welcome the opportunity to engage further with you and your Department on this matter.

Yours sincerely,

Hermann Pretorius

Head of Strategic Communications

Institute of Race Relations

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