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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-072494**

In the matter between:

AFRIFORUM NPC Plaintiff / Applicant / Appellant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA ,MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE ,SPEAKER OF THE NATIONAL ASSEMBLY ,CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES Defendant / Respondent

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Answering Affidavit

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

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BOX 30

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO.: 2025 – 072494

In the application by:

IRR LEGAL NPC	Intervening Party

In the application between:

AFRIFORUM NPC	Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent

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FILING SHEET

Documents filed herewith:

1. Third Respondent's Answering Affidavit to IRR Founding Affidavit – **Ms. Angela Thokozile Didiza.**

State Attorney Cape Town
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DATED AT **CAPE TOWN** ON THIS THE **12TH** DAY OF **JUNE 2026.**

PER: ______________________

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REF: 814/25/P12(AH)

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IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 2025-072494

In the application by:

IRR LEGAL NPC	Intervening Party

In the application between:

AFRIFORUM NPC	Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent

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ANSWERING AFFIDAVIT TO IRR LEGAL FOUNDING AFFIDAVIT

T.C A.T.

I, the undersigned,

ANGELA THOKOZILE DIDIZA

do hereby make oath and state:

1 I am the **SPEAKER OF THE NATIONAL ASSEMBLY**, cited in this application in my official capacity, representing the interest of the National Assembly (**"the NA"**) which finally adopted the Expropriation Bill. The NA is cited for the interest that it has in the application and the relief sought.

2 I depose to this answering affidavit on behalf of the NA by virtue of my position as the Speaker of the NA, and to extent that the NA plays a role in the process of passing legislation in terms of the Constitution of the Republic of South Africa, 1996 (**"the Constitution"**).

3 The facts set out in this affidavit fall within my personal knowledge, except where the contrary is expressly indicated or otherwise appears from the context, and these facts are to the best of my belief both true and correct.

4 Where I make legal submissions, I do so on the advice of the third respondent's legal representatives, which advice I accept. Any reference to such advice (including in this paragraph), must not be considered as a waiver of privilege. To the extent that any submissions were received from the fourth respondent, those submissions were considered in preparing this answer.

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5 Where I rely on facts that are not within my personal knowledge, I do so based on the documents and records in respect of the subject matter of this application. Where necessary, I have also consulted with officials who possess the required knowledge of the issues involved.

6 This affidavit is filed in opposition to IRR Legal NPC ("IRR")'s application and sets out the grounds for such opposition and the basis upon which IRR's application must be dismissed. For the avoidance of doubt, I deny the allegations in IRR's founding affidavit that are inconsistent with this answering affidavit and the answering affidavit to the main application instituted by AfriForum. To the extent that I have not expressly dealt with any allegation herein, those allegations are denied.

7 In this affidavit, I address the following in turn:

7.1 overview of IRR's application;

7.2 the purpose and proper interpretation of section 25(3) of the Constitution and section 12(3) of the Expropriation Act;

7.3 IRR's First Challenge - the alleged irrationality of section 12(2)(e);

7.4 IRR's Second Challenge - the constitutionality of section 12(3) and the provision for nil Compensation;

7.5 IRR's Third Challenge - section 12(3)(a);

T-C R.T.

7.6 IRR's Fourth Challenge - section 12(3)(b);

7.7 IRR's Fifth Challenge - section 12(3)(c);

7.8 IRR's Sixth Challenge - section 12(3)(d);

7.9 IRR's Seventh Challenge - section 12(4);

7.10 paragraph by paragraph responses; and

7.11 conclusion.

OVERVIEW OF IRR'S APPLICATION

8 IRR filed their application to intervene as an applicant on 9 October 2025 in the main application launched by AfriForum, which challenges the constitutional validity of the entire Expropriation Act, 2024 (Act No. 13 of 2024) ("**Expropriation Act**" or "**the Act**"). A copy of the Expropriation Act is attached to the answering affidavit to the main AfriForum application as annexure "**AA1**".

9 IRR's intervention seeks to impugn sections 12(2)(e), 12(3)(a) to (d) and 12(4) of the Expropriation Act to the extent that they are non-compliant with section 25 of the Constitution, as read with the limitations clause set out in section 36 of the Constitution, and have them declared unconstitutional and invalid.

T.C A7.

10 IRR contends that the aforementioned sections are unconstitutional when considered against the backdrop of the constitutional jurisprudence and accordingly intends to expand upon the constitutional challenge raised by AfriForum.

11 On that premise, and on the grounds mentioned above, IRR requests this honourable court to declare sections 12(2)(e), 12(3)(a) to (d) and 12(4) of the Expropriation Act unconstitutional and invalid.

12 The constitutionality of the Expropriation Act generally has been comprehensively set out in the answering affidavit to AfriForum's main application. This affidavit accordingly focuses on the challenges raised by IRR.

THE PROPER INTERPRETATION OF JUST AND EQUITABLE COMPENSATION

13 I deny IRR's premise that section 25(3) of the Constitution is a full-indemnity or market-value compensation provision. Properly construed, section 25(3) of the Constitution prescribes an equitable compensation standard. It requires compensation to be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, after considering all relevant circumstances. Section 12(1) of the Expropriation Act deliberately mirrors that constitutional language.

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14 Read with section 12(3) of the Expropriation Act, section 25(3) of the Constitution performs a reformative constitutional function. It moves South African expropriation law away from the pre-constitutional assumption that compensation is necessarily equivalent to market value or ordinary damages, and toward a contextual enquiry in which market value is only one factor, but not the controlling factor.

15 Section 12(3) of the Expropriation Act does not contradict section 25(3) of the Constitution. It gives concrete legislative content to it. Section 12(3) of the Expropriation Act provides that nil compensation may be just and equitable where land is expropriated in the public interest, but only having regard to all relevant circumstances. It then lists examples, including unused speculative land, unused state land acquired for no consideration, abandoned land, and land whose market value is equalled or exceeded by direct state investment or subsidy.

16 IRR's case proceeds from an unduly narrow premise, namely that section 25(3) of the Constitution is chiefly about restoring the expropriated owner to the same financial position as before the expropriation. That is incorrect. Section 25(3) of the Constitution is not merely a restitutionary or damages provision. It is a constitutional balancing provision.

17 The reform in section 12(3) of the Expropriation Act is therefore not that Parliament has created an exception to compensation. The reform is that Parliament has identified circumstances in which the constitutional balance

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itself may produce a nil amount. In other words, nil compensation is not treated as "*no compensation*"; it is treated as a possible just and equitable amount after the section 25(3) enquiry has been performed.

18 The Expropriation Act was enacted to align expropriation law with the Constitution and to replace the Expropriation Act, 1975 (Act No. 63 of 1975) ("1975 Act"), which did not reflect the Constitution's commitment to land reform and equitable access to natural resources. Parliament also says that, unlike the 1975 Act, the new Act requires compensation to be just and equitable and that nil compensation may be offered only where that is just and equitable after all relevant circumstances have been considered.

19 Section 25(3) of the Constitution supplies the constitutional test. Section 12(1) of the Expropriation Act repeats that test. Section 12(3) of the Expropriation Act applies that test to particular public-interest land-expropriation contexts where the balance may, in an appropriate case, produce nil compensation.

20 The listed circumstances in section 12(3) of the Expropriation Act are also tied to the very factors in section 25(3) of the Constitution. Unused speculative land speaks to the current use of the property and the purpose of expropriation. State-owned land acquired for no consideration speaks to the history of acquisition and use and the public interest in rational use of public assets. Abandoned land speaks to current use, control, and the

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real content of the owner's affected interest. Land whose value is equalled or exceeded by state investment or subsidy directly reflects section 25(3)'s express instruction to consider direct state investment and subsidy.

21 Section 12(3) of the Expropriation Act is also framed in deliberately non-automatic language. It says "*may*" be just and equitable; it applies only where land is expropriated in the public interest; and it requires regard to all relevant circumstances. Parliament's answer to AfriForum similarly says section 12(3) of the Expropriation Act is not a blanket provision, the list is not closed, each case must be evaluated individually, and the ultimate arbiter is the court where compensation is disputed.

22 The purpose of section 25(3) of the Constitution is not to constitutionalise market-value compensation, nor to guarantee that every expropriated owner is placed in the same financial position as before the expropriation. Its purpose is to prescribe a standard of justice and equity, requiring an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances. Section 12(3) of the Expropriation Act gives effect to that standard by identifying circumstances in which, after the constitutionally required enquiry, nil compensation may be just and equitable. It does not make nil compensation automatic, nor does it displace section 25(3) of the Constitution. It operates within section 25(3) of the Constitution.

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23 Section 12(3) of the Expropriation Act is not a legislative departure from section 25(3) of the Constitution; it is Parliament's attempt to operationalise the transformative purpose of section 25(3) of the Constitution. It recognises that in a constitutional property regime concerned with both protection and reform, compensation must prevent unfair loss, but it must also prevent public funds from being used to confer windfalls in circumstances where the owner's compensable interest is weak, the public interest is strong, or the value of the property is already attributable to state contribution.

24 In the event the court finds that section 12(3) of the Expropriation Act in its provision for nil compensation where land is expropriated in the public interest, having had regard to all relevant circumstances is an infringement of section 25(3) of the Constitution, section 25(8) of the Constitution makes provision for such limitation, provided it is in accordance with the provisions of section 36(1) of the Constitution. In turn, section 36(1) of the Constitution mandates that such limitations be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

> **"(a) the nature of the right;**
>
> **(b) the importance of the purpose of the limitation;**
>
> **(c) the nature and extent of the limitation;**
>
> **(d) the relation between the limitation and its purpose; and**

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(e) less restrictive means to achieve the purpose."

25 While a more comprehensive analysis is conducted further on in this affidavit, I submit that section 12(3) of the Expropriation Act, after having taken into consideration all relevant circumstances regarding whether nil compensation would be just and equitable, would meet the section 36 analysis.

26 Furthermore, section 36(2) of the Constitution states that laws may limit rights entrenched in the bill of rights in two distinct ways, namely *'as provided in subsection (1)'* or as provided *'in any other provision of the Constitution'*. Where section 12(3) of the Expropriation Act constitutes a departure from the provision for section 25(3) of the Constitution, which is denied, section 25(8) of the Constitution, as well as section 36(2) of the Constitution, sanction such a departure provided it is in accordance with section 36(1) of the Constitution.

FIRST CHALLENGE - IRRATIONALITY IN SECTION 12(2)

27 IRR alleges that sections 12(2)(e) and 12(2)(d) of the Expropriation Act are in conflict with one another and consequently vague, irrational and unconstitutional. This is disputed by the third and fourth respondents.

28 Section12(2)(d) of the Act stipulates that, in determining the amount of compensation to be paid, the expropriating authority must not, unless there are special circumstances in which it would be just and equitable to do so,

T.C. A.T.

take account of improvements made to the property in question after the date on which the notice of expropriation was served upon the expropriated owner or expropriated holder, as the case may be, except where the improvements were agreed to in advance by the expropriating authority or where they were undertaken in pursuance of obligations entered into before the date of expropriation.

29 Section 12(2)(d) of the Act is concerned with timing. It prevents post-notice improvements from inflating the amount of compensation, except where the improvements were agreed in advance by the expropriating authority or undertaken pursuant to obligations entered into before the date of expropriation.

30 The provision is rational because, once a notice of expropriation has been served, an owner should not be able to alter the compensation enquiry by making new improvements that were not agreed to and were not required by pre-existing obligations.

31 The two express exceptions in section 12(2)(d) of the Act preserve compensation for *bona fide* improvements. They cover improvements agreed to in advance by the expropriating authority and improvements undertaken pursuant to obligations entered into before the date of expropriation.

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32 Section 12(2) of the Expropriation Act is not a compensation-denial provision. It is a valuation-control provision. Its purpose is to prevent the compensation enquiry from being distorted by artificial, unlawful, speculative or opportunistic factors that do not properly form part of just and equitable compensation.

33 Section 12(2)(d) of the Expropriation Act deals with timing; section 12(2)(e) of the Expropriation Act deals with purpose or object. The former regulates when post-notice improvements may be considered. The latter excludes acts done with the object of obtaining compensation for those acts.

34 Section 12(2)(e) of the Expropriation Act is directed at artificial acts, sham arrangements, unnecessary improvements, or contrived value-creating steps taken for the purpose of inflating a compensation claim. It prevents the compensation enquiry from being distorted by conduct undertaken for no genuine property-related reason.

35 There is therefore no contradiction. Section 12(2)(d) of the Expropriation Act says when genuine post-notice improvements may be considered. Section 12(2)(e) of the Expropriation Act prevents a claimant from relying on acts that were done, not for a genuine property-related reason, but to manufacture or inflate a compensation claim.

36 The Act does not confer an unguided or arbitrary discretion on the expropriating authority. The authority must apply the just-and-equitable

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standard in section 12(1) of the Expropriation Act, the specific statutory criteria in section 12(2) of the Expropriation Act, and the procedural safeguards in the Act. Any dispute about compensation may be referred to court. The ultimate safeguard against arbitrary application is judicial determination.

37 Section 12(2) of the Expropriation Act is therefore a rational measure by the Parliament to safeguard the compensation process against abuse and to ensure that compensation remains aligned with the scheme of the Act as a whole.

38 Section 12(2)(e) of the Expropriation Act on the other hand prohibits the expropriating authority from taking into account anything done with the object of obtaining compensation therefor.

39 The courts have also emphasised that the purpose of compensation is not to make a profit or acquire gain. Section 12(2)(e) of the Expropriation Act is consistent with that principle because it prevents compensation for acts undertaken for the purpose of obtaining compensation, rather than for a genuine property-related purpose.

40 It is also common cause that with expropriation being compulsory acquisition, the only influence an unwilling or opportunistic expropriated owner or expropriated holder has in the process is in respect of compensation. For that reason, the compensation enquiry must be

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protected against opportunistic conduct that could distort the just and equitable assessment.

41 With this backdrop in mind, it is not difficult to appreciate that section 12(2)(e) of the Expropriation Act also serves a rational purpose in seeking to prevent any mischief or abuse that might be attempted by owners trying to increase the compensation due to them by effecting improvements for no reason other than to obtain gain or a profit from an expropriation.

42 Sections 12(2)(d) and 12(2)(e) of the Expropriation Act therefore both serve to safeguard against abuse of the compensation process. The former ensuring finality and compliance with the Act and the latter ensuring compensation is confined to the intended constitutional purpose.

43 Both subsections have their specific purpose and function in ensuring accountability and transparency within the compensation process in a manner that is not contradictory but complimentary.

44 The allegations of vagueness, irrationality and conflict, advanced by IRR are accordingly unfounded, occasioned by a misinterpretation of the subsections in their statutory and constitutional context.

<u>SECOND CHALLENGE – SECTION 12(3)</u>

45 The second challenge mounted by IRR is against section 12(3) of the Expropriation Act, on the basis that it allows for expropriation without

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compensation in the public interest, which is defined as including the nation's commitment to land reform and other reforms to bring about equitable access to the country's natural resources to redress past racial discriminatory laws. This sub-section they conclude, effectively excludes situations where land may be expropriated without compensation for a public purpose, which is defined as any purpose connected to the administration of law where the property will be used by or for the benefit of the public.

46 Consequently, according to IRR, unlike the Constitution which distinguishes between expropriations "*for a public purpose*" and those "*in the public interest*" but that does not negate the right to just and equitable compensation, which applies equally in both instances, the Expropriation Act negates the right to just and equitable compensation.

47 According to IRR, the dichotomy they allege to have been created by the Expropriation Act is significant, as it renders section 12(3) of the Expropriation Act only applicable to land expropriated in the public interest, but not to land expropriated for a public purpose.

48 They attribute this distinction to the Parliament accepting that it would not be just and equitable to furnish nil compensation where land was expropriated for a public purpose, as land clearly has a value greater than nil, otherwise there would be no interest in expropriating it for a public purpose.

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49 Again, IRR misdirects itself by conflating nil compensation with nil value, and by conflating nil compensation with no compensation. Nil compensation is not the absence of a compensation enquiry. It is a possible outcome of the just and equitable enquiry contemplated by section 25(3) of the Constitution and section 12(1) of the Act.

50 The Constitution and the Expropriation Act do not provide for expropriation "*without*" compensation. They provide for just and equitable compensation, which in some cases will be nil.

51 Section 25(3) of the Constitution therefore already permits the possibility of nil compensation if all relevant circumstances show that it would be just and equitable.

52 As explained at length in our answering affidavit to the main AfriForum application, section 25 of the Constitution does not permit generalised expropriation without compensation. However, there may be circumstances in which the Constitution permits expropriation for an amount of compensation equal to nil, provided that doing so is just and equitable.

53 The Constitution requires that a balancing exercise be undertaken to ensure that the amount of compensation results in a just and equitable balance between the public interest and the interests of those who are affected.

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54 The result depends on all the circumstances. Nil compensation may be just and equitable where, for example, the public interest is strong, the owner's compensable interest is weak, or the value of the property is already attributable to state contribution.

55 The Expropriation Act contemplates nil compensation as being part of the range of potential just and equitable compensation. Section 12(1) of the Expropriation Act replicates the constitutional formula in section 25(3) of the Constitution and outlines the prerequisites for compensation which are that the amount of compensation to be paid be just and equitable reflecting an equitable balance and the interests of those affected.

56 Section 12(3) of the Expropriation Act accordingly does not list circumstances in which it will always be just and equitable to expropriate for nil compensation. It expressly provides that '*having regard to all relevant circumstances*', including the five listed circumstances, it may be just and equitable to expropriate for nil compensation. Whether it would be just and equitable must depend on the facts of each case.

57 Section 12(3) of the Expropriation Act specifically requires all relevant circumstances to be considered in deciding whether nil compensation would be just and equitable. It does not prescribe scenarios for when nil compensation will necessarily be just and equitable but merely acknowledges the possibility of nil compensation as being part of the range of potential just and equitable compensation.

T.C. S.T.

58 IRR's attempt to draw a hard dichotomy between "*public purpose*" and "*public interest*" does not assist it.

59 Historically, land reform expropriations raised questions because beneficiaries of such expropriations may be private persons. The express reference to the public interest in section 25(2) of the Constitution was included to make clear that land reform and related reforms may constitute constitutionally valid grounds for expropriation.

60 Longstanding jurisprudence has recognised both narrow and broad understandings of public purpose in the context of expropriation. The narrow understanding relates to government purposes, while the broader understanding relates to purposes that benefit the public at large and overlap with the public interest.

61 Leading authorities accept that the public interest, as the broader category, may include the narrower category of public purpose. Even an expropriation that benefits a third party may be valid if it is undertaken in the public interest. The two concepts are therefore not rigid compartments that determine compensation in advance.

62 The reference to "*public interest*" in section 12(3) of the Expropriation Act does not negate or dilute the right to just and equitable compensation.

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63 Accordingly, IRR's alleged dichotomy does not render section 12(3) of the Expropriation Act unconstitutional. The controlling standard remains section 25(3) of the Constitution and section 12(1) of the Act: all relevant circumstances must be considered in deciding whether the proposed compensation is just and equitable.

64 The section 36 answer is dealt with below. At this stage it is sufficient to emphasise that section 12(3) of the Expropriation Act operates within, and not outside, the constitutional compensation standard.

THIRD CHALLENGE - SECTION 12(3)(a)

65 IRR also impugns section 12(3)(a) of the Expropriation Act on the basis that it provides that an owner may receive nil compensation simply because they own land and do not intend to develop that land or use that land to generate income.

66 The effect of the provision, they argue, is to punish an owner for not developing land or using it for the generation of an income - either because their intention is to benefit from the appreciation of market value, or as shown above, for any other reason. This they contend conflicts with the primacy of agreement in compensation and impacts on the rights of an owner to use their property as they see fit, subject only to reasonable constraints under the law.

T.C R7.

67 Nil compensation, it submits, is an intrusive and drastic limitation of the right to compensation as contained in section 25(2)(b) of the Constitution. It submits that this is a serious infringement of constitutional rights and that section 12(3)(a) of the Act is invalid for that reason.

68 As already substantiated above, section 12(3) of the Expropriation Act still requires all relevant circumstances to be considered in deciding whether nil compensation would be just and equitable. It does not prescribe scenarios for when nil compensation will necessarily be just and equitable. Put differently, it merely provides that subject to other relevant circumstances, it may be just and equitable for nil compensation to be paid where land is expropriated in the public interest.

69 The circumstances listed in section 12(3) of the Expropriation Act identify examples where the Parliament considered that special attention may be required in the land reform context.

70 The significance of listing the examples in section 12(3)(a) to (e) is to do no more than to highlight to an expropriating authority and a court (in the case of a dispute over the amount of compensation) that special consideration should be given to those factors.

71 It is not an instruction always to offer or award nil compensation in those instances, regardless of other circumstances, including those in section

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12(1)(a) to (e) - that would be untenable as a matter of statutory interpretation and inconsistent with section 25(3) of the Constitution.

72 To address IRR's challenge directly, section 12(3)(a) of the Expropriation Act does not punish ownership, non-development, or investment. It identifies one circumstance that may be relevant where land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value. Even then, nil compensation is not automatic.

73 As clarified extensively above, the court would still have to take into account and consider all relevant circumstances on a case by case basis in deciding whether the proposed compensation would be just and equitable.

74 IRR's contention that section 12(3)(a) of the Expropriation Act is irrational; an intrusive and drastic limitation of the right to compensation as contained in section 25(2)(b) of the Constitution; and a serious infringement of constitutional rights is consequently unfounded.

FOURTH CHALLENGE - SECTION 12(3)(b)

75 IRR also impugns section 12(3)(b) of the Expropriation Act on the basis that the purpose of paying nil compensation under that provision is

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allegedly to punish an organ of state for not using land for its core functions, at least in respect of land purchased for no consideration.

76 Section 12(3)(b) of the Expropriation Act is directed at the rational deployment of public assets. Where an organ of state holds land that it is not using for its core functions, is not reasonably likely to require the land for those functions, and acquired it for no consideration, those are material factors that may support nil compensation.

77 The provision is not punitive. It recognises that public land held by one organ of state does not have the same compensatory character as privately acquired land, particularly where the organ of state paid nothing for the land and does not require it for its mandate.

78 The phrase "*core functions*" is not vague. It is capable of objective determination by reference to the organ of state's statutory mandate, constitutional functions, budgeted activities and actual use of the land. In any event, nil compensation remains subject to the section 12(1) just and equitable enquiry and to judicial determination if compensation is disputed.

FIFTH CHALLENGE - SECTION 12(3)(c)

79 Despite conceding that section 12(3)(c) of the Expropriation Act has a valid rationale, IRR impugns section 12(3)(c) of the Expropriation Act on the basis that its construction opens the door to unreasonable and arbitrary

T.C. A.T.

expropriation with nil compensation as it lacks sufficient guidance to an administrator as to when the provision is applicable.

80 Section 12(3)(c) of the Expropriation Act is carefully confined. It applies only where, notwithstanding registered ownership, an owner has abandoned land by failing to exercise control over it despite being reasonably capable of doing so. The subsection therefore requires more than neglect, temporary absence, unlawful occupation despite genuine efforts by the owner, or an inability to exercise control.

81 It is consequently denied that the provision gives administrators an unguided discretion. Whether land has been abandoned, and whether the owner was reasonably capable of exercising control, are fact sensitive questions to be addressed against all relevant circumstances and ultimately reviewable or determinable by a court.

82 As already substantiated above, section 12(3) of the Expropriation Act still requires all relevant circumstances to be considered in deciding whether nil compensation would be just and equitable. Subject to other relevant circumstances, it may be just and equitable for nil compensation to be paid where land is expropriated in the public interest from an owner, with the ability to control and safeguard her land, but fails to do so and physically abandons the land, which could be put to a productive use in the public interest.

T.C. R7.

SIXTH CHALLENGE - SECTION 12(3)(d)

83 According to IRR, the right to compensation as provided in section [sic...] 25(2)(b) is limited to punish those owners who have not improved the market value of the land beyond the value of state investment or subsidy

84 IRR cautions that many of those owners who could fall into the ambit of this section are beneficiaries of land reform programmes and that such groups of persons shall be disproportionately affected and punished for not potentially having the means to improve the market value of the land beyond the value of the state's investment or subsidies.

85 Section 12(3)(d) of the Expropriation Act provides for a situation where nil compensation can be paid "*where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land*".

86 Section 12(3)(d) of the Expropriation Act gives effect to the express constitutional factor in section 25(3)(d) of the Constitution which is the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property. Its purpose is not punishment but to avoid double compensation where the state has already funded value equal to or greater than the market value of the land.

T.C. A7.

87 The concerns raised by IRR in respect of land-reform beneficiaries are overstated. Section 12(3)(d) of the Expropriation Act does not operate automatically. The position of any beneficiary, the nature and terms of state support, the purpose of the expropriation, the history of the acquisition and use, and all other relevant circumstances must still be considered before nil compensation could be just and equitable.

SEVENTH CHALLENGE - SECTION 12(4)

88 IRR impugns section 12(4) of the Expropriation Act on the basis that owners in terms of section 23(1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) ("Labour Tenants Act") have a right to compensation as provided in the Constitution, being section 25(2)(b) of the Constitution. Section 12(4) of the Expropriation Act limits this right to compensation by providing for nil compensation to be paid.

89 It further contends that there are no guiding provisions on when such nil compensation would be just and equitable, leaving it all in the hands of the arbitrator or court.

90 Section 12(3) and (4) of the Expropriation Act both concern circumstances in which nil compensation may be just and equitable. However, section 12(4) of the Expropriation Act is narrower in that it applies when the court or arbitrator determines compensation in terms of section 23 of the Labour Tenants Act.

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91 IRR is correct in observing that the two provisions that provide for the possibility of nil compensation where it is just and equitable and all relevant circumstances are taken into account, are sections 12(3) and 12(4). The purpose of section 12(3) of the Expropriation Act and why it is consistent with the constitutional imperative has already been discussed.

92 Section 25 of the Constitution requires the state to actively pursue the goals of land restitution, reform of land tenure rights and grants an entitlement to the restitution of property disposed in pursuance of apartheid policies. The purpose of section 12(3) of the Expropriation Act and why it is consistent with the constitutional transformative imperative has already been discussed.

93 Section 12(4) of the Expropriation Act is a legislative signal to courts and arbitrators exercising powers under the Labour Tenants Act that it would be *permissible*, but is not obligatory upon – them to order expropriation for nil compensation. The provision does not fetter their discretion, which must be exercised in terms of the Labour Tenants Act, the Expropriation Act and the Constitution.

94 It is a deliberate and intentional implementation of the constitutional project as espoused in section 23(1) of the Labour Tenants Act in the land reform provisions of section 25(5) to (9) of the Constitution emphasising that under the Constitution, the protection of property as an individual right is not absolute but subject to societal consideration. In this instance, the

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highlighted societal consideration is the need for land reform in the context of labour tenant and the constitutional obligation to redress historical patterns of dispossession and inequality.

95 It is also not true that there are no guiding provisions on when such nil compensation would be just and equitable, leaving it all in the hands of the arbitrator or court. Section 12(4) of the Expropriation Act expressly requires regard to be had to all relevant circumstances. Section 12(1) of the Expropriation Act, in alignment with section 25(3) of the Constitution, provides the governing standard and the Labour Tenants Act provides the statutory context in which the determination is made.

96 The provision is therefore not vague or arbitrary. It leaves it to the court or arbitrator to apply the constitutional and statutory standard to the facts of the particular labour tenant matter.

97 As in the context of section 12(3) of the Expropriation Act, it is denied that section 12(4) of the Expropriation Act is inconsistent with the Constitution and a departure from section 25 of the Constitution. In the event, the court finds that section 12(4) of the Expropriation Act in its provision for nil compensation where land is expropriated in respect of expropriations concerning labour tenants, having had regard to all relevant circumstances is an infringement of 25(3) of the Constitution, section 25(8) of the Constitution makes provision for such limitation, provided it is in accordance with the provisions of section 36(1) of the Constitution.

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98 IRR has, however, not shown that section 12(4) of the Expropriation Act limits the right to compensation unjustifiably or that it is inconsistent with section 25 of the Constitution.

THE LIMITATION OF RIGHTS

99 IRR concludes by highlighting the importance of the right to compensation and its necessity in the protection of the interests of persons (and certain organs of state) from the significant power afforded to the state under the Expropriation Act to expropriate property.

100 According to IRR, expropriation has such a serious impact on the right to property that if not kept under proper check, it affords the state very serious overreach into private property.

101 IRR's contentions lead it to conclude that the public interest sought to be balanced through the Expropriation Act is not so compelling as to deprive an owner of compensation.

102 IRR invites Parliament to justify the constitutional infringements that it alleges section 12 of the Act violates in terms of section 36 of the Constitution.

103 At the outset I emphasise that IRR has not established that any of the rights in section 25 of the Constitution have been infringed. Accordingly, there is no necessity to justify the alleged infringements.

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104 To the extent that the impugned sections limit any of the section 25 rights protected in the Constitution, it is submitted that the limitation is sanctioned under section 25(8) and 36(2) of the Constitution and would be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom in terms of section 36 of the Constitution, taking into account all relevant factors including those listed in section 36(1)(a) to (e) of the Constitution.

105 Below is an analysis of whether the limitation (which is denied) imposed by providing for nil compensation falls short of the section 36 limitations test.

<u>Nature of the rights the state seeks to balance</u>

106 Section 25 of the Constitution, widely known as the "*property clause*", protects private property rights while simultaneously mandating the state to enact land reform and broaden equitable access to natural resources.

107 IRR's preoccupation with the rights of current property owners to be compensated in all circumstances neglects the constitutional project, which also seeks the restoration of secure property rights to those denied access to or deprived of property in the past and to effect social change.

108 In recognising property as a social construct however, our apex court found that individual property rights are "*not absolute but subject to societal*

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considerations", and endorsed the view of Prof Andre Van der Walt by holding that, when interpreting the property clause, one must:

"move away from a static, typically private-law conceptualist view of the Constitution as a guarantee of the status quo to a dynamic, typically public law view of the Constitution as an instrument for social change and transformation under the auspices [and I would add 'and control'] of entrenched constitutional values."[1]

109 This non-absolutist conception of individual constitutional property is the premise of the Constitution's vision of an "*orderly opening-up or restoration of secure property rights for those denied access to or deprived of them in the past*".

Purpose: The importance and objective of the limitation

110 IRR's one-sided appreciation of rights neglects the people within South Africa who live under insecure tenure and many of whom were disposed of their land through past racially discriminatory laws or practices.

111 Given the urgent need to address this, section 25 of the Constitution intentionally mandates the state to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

112 In recognising the importance of land reform and addressing the ills of the past, section 25(8) of the Constitution further specifies that no provision in

[1] AJ Van der Walt The Constitutional Property Clause (1997, Juta, Kenwyn) at 11.

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the law may impede the state from taking legislative and other measures for land, water, and related reform to address the results of past racial discrimination.

113 Specifically, in relation to some of the limitations complained of by IRR, including the exclusion of post notice and acts done with compensation in mind, as well the examples outlined in section 12(3) of the Expropriation Act on possible cases for nil expropriation, Parliament clearly sought to safeguard the compensation process from abuse and unnecessary impediments.

Extent: The nature and scale of the limitation

114 While section 25 of the Constitution does not permit generalised expropriation without compensation, it permits expropriation for an amount of compensation equal to nil, provided that doing so is just and equitable.

115 The state may not be impeded from taking legislative and other measures to achieve land, water, and related reform within the limitations as provided for under section 36(1) of the Constitution.

116 The Expropriation Act contains a staged process which, amongst others, entails investigation, valuation, notice, an offer with an explanation of how compensation was calculated, objections, submissions, mediation, and court determination where compensation is disputed.

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117 Moreover, the Expropriation Act is at pains to ensure that in expropriating property for public interest or public purpose, there is judicial oversight or agreement between it and affected parties. It mandates the expropriating authority to conduct all the necessary investigations and valuations to ensure that where a property owner or right holder is expropriated of their property they receive just and equitable compensation.

118 The Expropriation Act also recognises that nil compensation will, in certain circumstances, be regarded as just and equitable.

119 Section 12(1) of the Expropriation Act replicates the constitutional formula in section 25(3) of the Constitution and outlines the prerequisites for compensation which are that the amount of compensation to be paid be just and equitable reflecting an equitable balance between the public interest and the interests of those affected.

120 Section 12(3) of the Expropriation Act provides examples of circumstances in which nil compensation may be just and equitable. It does not dispense with the balancing enquiry. On the contrary, it expressly requires regard to all relevant circumstances.

<u>**Relation: The connection between the limitation and its intended purpose**</u>

121 The Constitution requires that a balancing exercise be undertaken to ensure that the amount of compensation results in a just and equitable

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balance between the public interest and the interests of those who are affected. In some cases, the just and equitable amount of compensation will be nil.

<u>Less restrictive means: Whether there are alternative ways to achieve the same purpose without infringing as heavily on the right</u>

122 In providing for nil compensation, the Expropriation Act has confined it to expropriation in the public interest or for public purpose and stipulated that any departure from the general provisions protecting property rights in this context must still strictly align with the section 36(1) limitation requirements, ensuring that state actions are reasonable and justifiable.

123 Further, the Expropriation Act only permits expropriation of property by agreement or with judicial oversight, which limits the concern expressed by the IRR in respect of abuse of power by the expropriating authority.

124 Section 12 of the Expropriation Act also insists that all relevant circumstances must be taken into account.

125 It is hard to contemplate a more tempered approach or less restrictive means in balancing the various interests at stake.

126 In view of the above, IRR's contention that expropriation particularly with nil compensation affords the state very serious overreach into private property, that the public interest sought to be balanced through the

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Expropriation Act is not so compelling as to deprive an owner of compensation, is unfounded.

127 Moreover, their contention that the provisions cannot be rescued under section 36(1) of the Constitution is not and cannot be substantiated.

PARAGRAPH BY PARAGRAPH RESPONSE

128 I now turn to traverse the founding affidavit ad seriatim. I do so only to the extent that is necessary taking into account what I have already said above.

129 Where I neglect to deal with any specific allegation in the founding affidavit that is in contrast to or does not accord with what is stated in this affidavit and my answering affidavit in the main application by AfriForum, the allegation should be considered as denied.

Ad Paragraphs 1 to 3

130 Save to deny that the allegations contained herein are true and correct, the remaining allegations contained in these paragraphs are noted.

Ad Paragraphs 4 to 5

131 I admit that IRR Legal seeks to intervene in the main application instituted by AfriForum and that it seeks to challenge certain provisions of section 12

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of the Expropriation Act. I deny, however, that the impugned provisions are unconstitutional or invalid.

132 I admit that IRR Legal seeks an order declaring sections 12(2)(e), 12(3)(a) to (d), and 12(4) of the Expropriation Act unconstitutional and invalid. I deny that IRR Legal is entitled to that relief.

133 To the extent that paragraph 5 alleges that the impugned provisions are inconsistent with section 25 of the Constitution, read with section 36 of the Constitution, that allegation is denied. The impugned provisions are rational, constitutionally compliant, and properly situated within the just and equitable compensation framework required by section 25(3) of the Constitution.

Ad Paragraphs 6 to 8

134 The contents of these paragraphs in as far as they outline the purpose and objectives of IRR are noted. To the extent that the documents filed by IRR speak for themselves, I note their contents.

Ad Paragraphs 9 to 11

135 The contents of these paragraphs are noted to the extent that IRR relies on section 38 of the Constitution. I do not, for purposes of this affidavit, challenge IRR's standing. However, standing does not establish the merits of IRR's constitutional challenge.

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136 The contents of these paragraphs in as far as they outline the purpose and objectives of IRR are noted. It is further noted that in their document on the history and purpose of the Institute is attached as IRR3,[2] they concede that not all aspects of the IRR's history exemplify proud service of its objectives, particularly around matters pertaining to land. In the past one of IRR's representatives, Mr Hofmeyer supported anti-black race law, insisting they be kept in force for the benefit of black people. He singled out the Native (Trust and) Land Act, a foundational violation of human rights that limited black people to a maximum potential ownership of only 13% of South Africa's land surface, as his choice example.

137 IRR's submissions are incongruent with the constitutional imperatives sought to be advanced by the Constitution and the Expropriation Act, particularly in respect of land reform. They are a stark reminder that IRR still lacks the appreciation of the crucial and urgent need for land reform particularly for transformation.

<u>Ad Paragraphs 12 to 13</u>

138 I deny the allegation in paragraph 12 that affected persons will have little or no means to challenge the Expropriation Act or its application in court. The Act preserves access to court. Compensation disputes may be mediated or determined by a court, and a person affected by an

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[2] Annexure IRR3, Case Lines 012-54.

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expropriation is not precluded from approaching a court for appropriate relief.

139 The contents of paragraph 13 are denied. The Expropriation Act does not unlawfully infringe the right to property. It gives effect to section 25 of the Constitution by creating a uniform statutory framework for expropriation for a public purpose or in the public interest, subject to just and equitable compensation.

Ad Paragraphs 14 to 20

140 The contents of these paragraphs are admitted.

Ad Paragraphs 21 to 24

141 The background perspective articulated by IRR in relation to past discrimination and violation of land rights is noted as well as the interplay between the Constitution and the Expropriation Act to address the aforementioned.

142 The contents of paragraph 24 are admitted to the extent that the 1975 Act has historically governed expropriation and that the adoption of the Constitution required expropriation law to be interpreted through the lens of section 25 of the Constitution. I deny, however, any implication that the Expropriation Act, 2024 fails to give effect to that constitutional standard.

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Ad Paragraph 25

143 IRR and other participants' comments made in respect of the then Expropriation Bill [B23 2020] were carefully considered. Public participation however does not guarantee that the end results of the consultation process should reflect the views submitted, particularly if they weren't correct and in line with the constitutional imperatives and objective being pursued.

144 As demonstrated above, IRR's submissions are not in line with the mandate and objectives of the Constitution and Expropriation Act particularly in respect of what just and equitable entails and whether nil compensations are in violation of that standard/principle.

Ad Paragraphs 26 to 34

145 I admit that section 25(3) of the Constitution governs the determination of compensation where property is expropriated, and that such compensation must be just and equitable. I deny, however, that the purpose of section 25(3) of the Constitution is confined to restoring the expropriated owner to the same financial position as before the expropriation, or to requiring compensation equivalent to market value in every case.

146 Section 25(3) of the Constitution is a constitutional balancing provision. It requires the amount, time and manner of payment of compensation to be

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just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances. Market value is one relevant circumstance, but it is not the sole or decisive criterion.

147 Section 25(3) of the Constitution must be read with section 25 as a whole, including section 25(4) of the Constitution, which provides that 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.

148 I deny that nil compensation is constitutionally permissible only where property is valueless or where the owner has committed grave misconduct. The constitutional question is whether the compensation, including nil compensation in an appropriate case, is just and equitable having regard to all relevant circumstances.

149 I further deny that the Expropriation Act fails to give effect to section 25(3) of the Constitution. Section 12(1) of the Act mirrors the constitutional standard. Section 12(3) and section 12(4) of the Act do not displace that standard. They identify circumstances in which nil compensation may be just and equitable, without predetermining that outcome.

Ad Paragraphs 25 to 37

150 I deny the contents of these paragraphs.

151 The impugned provisions do not place an unreasonable or unjustifiable limitation on the right to property. They operate within the constitutional framework of just and equitable compensation.

Ad Paragraphs 38 to 43

152 The contents of these paragraphs are denied, save to the extent that they correctly quote portions of section 12(2) of the Expropriation Act.

153 IRRI's challenge is premised on an incorrect reading of sections 12(2)(d) and 12(2)(e). There is no contradiction between those provisions.

154 Section 12(2)(d) of the Expropriation Act regulates improvements made after the date on which the notice of expropriation was served. Such improvements are ordinarily not taken into account, except where they were agreed to in advance by the expropriating authority or where they were undertaken pursuant to obligations entered into before the date of expropriation.

155 Section 12(2)(e) of the Expropriation Act, by contrast, is directed at a different mischief. It prevents compensation from being inflated by acts done with the object of obtaining compensation for those acts. It is a provision that seeks to prevent an abuse of the compensation system. It ensures that the compensation enquiry is not distorted by artificial,

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opportunistic or contrived conduct undertaken for the purpose of increasing the compensation claim.

156 The two provisions are complementary. Section 12(2)(d) of the Expropriation Act recognises that bona fide post notice improvements may, in defined circumstances, properly be considered. Section 12(2)(e) of the Expropriation Act ensures that acts done for the purpose of manufacturing or increasing a compensation claim are not treated as compensable merely because they have some connection to the property.

157 IRR's argument also ignores the opening words of section 12(2) of the Expropriation Act. The matters listed in section 12(2) of the Expropriation Act are not excluded inflexibly. They may be taken into account where there are special circumstances in which it would be just and equitable to do so.

158 It is accordingly denied that section 12(2)(e) of the Expropriation Act is vague, irrational or unconstitutional. The decision-maker must determine whether the act in question was done with the object of obtaining compensation for it. That determination is fact-sensitive, but it is not unguided.

159 It is further denied that section 12(2)(e) of the Expropriation Act permits arbitrary decision-making in relation to which section is applicable. The expropriating authority must act within the framework of section 12(1) of

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the Expropriation Act, the Act's procedural safeguards, and the affected person's right to dispute compensation and approach a court.

Ad Paragraphs 44 to 49

160 The contents of these paragraphs are denied, save to the extent that they correctly quote section 25 of the Constitution and section 12(3) of the Expropriation Act.

161 IRR's challenge rests on the incorrect premise that section 12(3) of the Expropriation Act authorises expropriation "*without compensation*". It does not. Section 12(3) of the Expropriation Act provides that nil compensation may be just and equitable in specified circumstances. It is a possible outcome of the constitutionally required compensation enquiry.

162 I admit that section 25(2) of the Constitution refers to expropriation for a public purpose or in the public interest. I deny, however, that section 12(3) of the Expropriation Act negates the right to just and equitable compensation. Section 12(3) of the Expropriation Act must be read with section 12(1) of the Expropriation Act, which requires compensation to be just and equitable in all cases.

163 The fact that section 12(3) of the Expropriation Act is framed by reference to land expropriated in the public interest does not render it unconstitutional. Even on an interpretation that it narrows the

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circumstances in which nil compensation is expressly identified by the Act as a possible just and equitable outcome.

164 I deny that Parliament accepted, by implication, that nil compensation can never be just and equitable where land is expropriated for a public purpose. The constitutional enquiry remains whether the amount of compensation is just and equitable, having regard to all relevant circumstances. As stated above, expropriation for public purpose or in the public interest have at times been used loosely and interchangeably.

165 IRR's reliance on examples such as airports, schools and parks in paragraph 45 does not establish unconstitutionality. Compensation is not determined by asking whether the property is useful to the expropriating authority. It is determined by applying the just-and-equitable standard in section 25(3) of the Constitution and section 12(1) of the Expropriation Act.

166 I deny that the words "*including but not limited to*" render section 12(3) of the Expropriation Act vague or irrational as alleged in paragraph 47. Those words are consistent with section 25(3) of the Constitution, which requires regard to all relevant circumstances. A closed list would be inconsistent with the broad constitutional enquiry.

167 I further deny that section 12(3) of the Expropriation Act shifts an unfair burden onto owners as alleged in paragraph 48. The Act requires an offer

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of compensation, provides for objections and submissions, and permits unresolved compensation disputes to be determined by a court.

168 Paragraph 49 is denied. Section 12(3) of the Expropriation Act does not leave the circumstances for nil compensation to the whim of an administrator. It is constrained by the statutory text, the requirement of public interest, the requirement to consider all relevant circumstances, the standard of just and equitable compensation, and judicial oversight.

Ad Paragraphs 50 to 59

169 The contents of paragraph 50 are admitted only to the extent that it quotes section 12(3)(a) of the Expropriation Act. The interpretation placed on that provision by IRR is denied.

170 I deny that section 12(3)(a) of the Expropriation Act exposes any owner of unused land to automatic nil compensation. The provision applies only where land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but simply to benefit from appreciation of its market value. Even then, nil compensation is not automatic.

171 The phrase "*main purpose*" is not impermissibly vague as alleged in paragraph 54. It requires a factual enquiry into the circumstances of the land, the conduct of the owner, the history and use of the land, and the

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purpose of the expropriation. These matters are capable of objective assessment.

172 IRR's example of inherited land does not establish constitutional invalidity. In any actual case, the expropriating authority, and ultimately a court if the matter is disputed, would have to consider all relevant circumstances. Those circumstances may include how the land was acquired, why it is unused, whether there are lawful impediments to its use, and whether nil compensation would be just and equitable.

173 It is denied that section 12(3)(a) of the Expropriation Act punishes an owner for not developing land or for not using land to generate income. The subsection identifies one circumstance that may be relevant in determining compensation where land is expropriated in the public interest.

174 I deny that section 12(3)(a) of the Expropriation Act infringes the right of ownership or the right to use property as the owner sees fit. Property rights under section 25 of the Constitution are not absolute. They are protected within a constitutional framework that also recognises public purpose, public interest, land reform, and equitable access to natural resources.

175 I further deny that section 12(3)(a) of the Expropriation Act is irrational or that it imposes an intrusive and drastic limitation on the right to compensation. The provision does not compel nil compensation. It

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permits nil compensation only where that outcome is just and equitable after all relevant circumstances have been considered.

Ad Paragraphs 60 to 71

176 The contents of these paragraphs are denied, save to the extent that they correctly quote section 12(3)(b) of the Expropriation Act.

177 I deny that the purpose of paying nil compensation in terms of section 12(3)(b) of the Expropriation Act is to punish an organ of state. Section 12(3)(b) of the Expropriation Act identifies circumstances in which nil compensation may be just and equitable where an organ of state holds land that it is not using for its core functions, is not reasonably likely to require for future activities in that regard, and acquired for no consideration.

178 Section 12(3)(b) of the Expropriation Act serves a rational public purpose. It recognises that public land acquired for no consideration and not required for the organ of state's core functions may, in an appropriate case, be better used for another public-interest purpose without requiring one public entity to extract compensation from another.

179 I deny that the right of an organ of state to compensation is identical in all respects to that of a private person. In any event, the provision does not

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deprive an organ of state of compensation automatically. It only permits nil compensation where that is just and equitable in the circumstances.

180 The expression "*core functions*" is not vague. An organ of state's core functions can be determined by reference to its constitutional or statutory mandate, its powers and duties, the purpose for which it holds the land, and its actual and reasonably anticipated future activities.

181 I deny that section 12(3)(b) of the Expropriation Act permits the expropriating authority arbitrarily to decide what constitutes a core function. The authority's decision is subject to the requirements of legality, rationality, the just and equitable compensation standard, and court oversight.

182 IRR's allegations concerning universities, academic freedom, asset books and anticipated income are speculative. They do not demonstrate that section 12(3)(b) of the Expropriation Act is unconstitutional. In any actual case, all relevant circumstances would have to be considered.

183 It is denied that section 12(3)(b) of the Expropriation Act fails to strike an equitable balance. The provision does not confer a wide discretion to an expropriating authority. It identifies circumstances in which nil compensation may be just and equitable, subject to the full compensation enquiry required by section 12(1) of the Expropriation Act.

T.C. [illegible]

Ad Paragraphs 72 to 75

184 The contents of paragraph 72 are admitted only to the extent that it quotes section 12(3)(c) of the Expropriation Act. The interpretation placed on the provision by IRR Legal is denied.

185 I deny that section 12(3)(c) of the Expropriation Act is impermissibly vague. The provision contains objective requirements. It applies where an owner has abandoned land by failing to exercise control over it despite being reasonably capable of doing so.

186 The words "*abandoned*", "*failed to exercise control*" and "*reasonably capable*" are capable of practical and legal application. They require an assessment of the owner's conduct, the factual condition of the land, the owner's ability to exercise control, and any reasons why control was not exercised.

187 I deny that section 12(3)(c) of the Expropriation Act would apply merely because land has been hijacked, unlawfully occupied, fenced, vacant, or not constantly attended to. If an owner is taking reasonable steps to protect, recover, or exercise control over land, those facts would be relevant and would have to be considered.

188 Section 12(3)(c) of the Expropriation Act does not authorise arbitrary expropriation for nil compensation. It remains subject to the requirement

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that all relevant circumstances must be considered and that any compensation, including nil compensation, must be just and equitable.

Ad Paragraphs 76 to 83

189 The contents of paragraph 76 are admitted only to the extent that it quotes section 12(3)(d) of the Expropriation Act. The interpretation placed on the provision by IRR is denied.

190 I deny that section 12(3)(d) of the Expropriation Act punishes owners who have not increased the market value of land beyond the value of state investment or subsidy. To the contrary, it gives effect to section 25(3) of the Constitution, which expressly requires the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property to be considered.

191 Section 12(3)(d) of the Expropriation Act is rational. Where the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of land equals or exceeds the market value of the land, it may be just and equitable for compensation to be nil. The subsection prevents double compensation and avoids using public funds to pay again for value already created or funded by the state.

192 I deny that land reform beneficiaries will automatically be deprived of compensation. Section 12(3)(d) of the Expropriation Act does not operate

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automatically. The personal circumstances of the affected person, the nature and purpose of the subsidy, the history of acquisition and use, the purpose of expropriation, and all other relevant circumstances must still be considered.

193 I deny that section 12(3)(d) of the Expropriation Act effects an unlawful retrospective clawback of subsidies. It does not require repayment of subsidies. It identifies state investment or subsidy as a relevant factor in determining what compensation is just and equitable at the time of expropriation.

194 I deny that section 12(3)(d) of the Expropriation Act is vague or incapable of fair application. The market value of land and the present value of state investment or subsidy are matters capable of valuation and proof. Any dispute may be resolved through the mechanisms provided by the Act, including court determination.

195 I further deny that section 12(3)(d) of the Expropriation Act limits access to court. The Act expressly preserves the right of an affected party to dispute compensation and to approach a court for determination where necessary.

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Ad Paragraphs 84 to 86

196 The contents of these paragraphs are denied, save to the extent that they correctly refer to section 12(4) of the Expropriation Act and section 23 of the Labour Tenants Act.

197 Section 12(4) of the Expropriation Act does not offend the concept of just and equitable compensation. It expressly requires regard to all relevant circumstances and provides only that nil compensation may be just and equitable. It does not compel nil compensation.

198 I deny that owners under section 23(1) of the Labour Tenants Act are deprived of their constitutional right to compensation. Section 12(4) of the Expropriation Act preserves the just and equitable standard and places the determination in the hands of a court or arbitrator.

199 I deny that section 12(4) of the Expropriation Act lacks guiding principles. The court or arbitrator must apply section 25(3) of the Constitution, section 12(1) of the Expropriation Act, the Labour Tenants Act, and the requirement to consider all relevant circumstances.

200 I further deny that section 12(4) of the Expropriation Act is vague or unconstitutional. It is a permissive provision that recognises that, in the land reform context governed by the Labour Tenants Act, nil compensation may in an appropriate case be just and equitable.

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Ad Paragraphs 87 to 94

201 The contents of paragraph 87 are denied to the extent that IRR alleges that compensation must always be 'more than nil. Section 25 of the Constitution requires just and equitable compensation. In an appropriate case, the just and equitable amount may be nil.

202 The contents of paragraph 88 are noted. The respondents' answer to IRR's constitutional challenge is set out in this affidavit. To the extent that IRR reserves a right to reply, that is a matter regulated by the rules and directions of this honourable court.

203 The contents of paragraphs 89 and 90 are admitted only to the extent that they correctly state that section 36 of the Constitution concerns the limitation of rights. I deny, however, that the impugned provisions impose an unjustifiable limitation on the right to property.

204 The impugned provisions do not deprive owners of the right to compensation. They regulate the determination of compensation within the constitutional framework of justice and equity. They therefore do not require "*rescue*" under section 36 of the Constitution in the manner alleged by IRR.

205 In the alternative, and to the extent that this honourable court finds that any of the impugned provisions limits a right in the Bill of Rights, such limitation

T.C. & 7.

is reasonable and justifiable. The provisions serve important constitutional purposes, including land reform, equitable access to natural resources, rational use of public assets and the prevention of abuse of the compensation process.

206 Paragraph 91 is denied. IRR understates the importance of the public interest served by the Expropriation Act. Section 25 of the Constitution itself recognises land reform and equitable access to natural resources as constitutional commitments.

207 Paragraph 92 is denied. The Constitution does not prohibit Parliament from enacting legislation that identifies circumstances in which nil compensation may be just and equitable. Section 25(8) of the Constitution expressly provides that no provision of section 25 of the Constitution may impede the state from taking legislative and other measures to achieve land, water and related reform, subject to section 36 of the Constitution.

208 Paragraph 93 is noted to the extent that IRR recognises the importance of land reform and the need for the state to expropriate land for legitimate public purposes. The balance, however, is not struck by excluding nil compensation in advance. It is struck through the just and equitable enquiry required by section 25(3) of the Constitution and section 12(1) of the Expropriation Act.

T.C. [illegible]

209 Paragraph 94 is denied. The Expropriation Act is not overbroad. The impugned provisions are carefully framed, non-automatic, subject to all relevant circumstances, and subject to judicial oversight. They are therefore constitutionally compliant.

Ad Paragraphs 95 to 100

210 I do not take issue with the contents of these paragraphs.

Ad Paragraphs 101 to 103

211 The contents of paragraph 101 are denied. IRR is not entitled to an order declaring sections 12(2)(e), 12(3)(a), 12(3)(b), 12(3)(c), 12(3)(d) or 12(4) of the Expropriation Act unconstitutional and invalid.

212 Properly construed, the impugned provisions do not authorise arbitrary expropriation, do not negate the right to just and equitable compensation, and do not compel nil compensation. They operate within the constitutional standard prescribed by section 25(3) of the Constitution and reflected in section 12(1) of the Expropriation Act.

213 Paragraph 102 is denied. If, contrary to the respondents' submissions, this honourable court were to find any constitutional defect in any of the impugned provisions, immediate and unqualified invalidation would not necessarily be just and equitable.

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214 Any remedy should be tailored to the precise defect found. The court should not grant relief that removes constitutionally permissible applications of the impugned provisions or disrupts the operation of the broader statutory scheme.

215 In the alternative, any declaration of invalidity should be limited to the extent of the inconsistency and, where appropriate, suspended to afford Parliament an opportunity to correct any defect.

216 Paragraph 103 is admitted only to the extent that, if this honourable court were to declare provisions of an Act of Parliament constitutionally invalid, such order would require confirmation by the Constitutional Court before it has force.

217 However, because IRR has not established any constitutional invalidity, the relief sought in paragraphs 101 to 103 must accordingly be dismissed.

CONCLUSION

218 In conclusion, IRR's application is premised on an incorrect interpretation of section 25 of the Constitution and section 12 of the Expropriation Act. It treats nil compensation as though it were expropriation without compensation, and it treats the listed circumstances in section 12(3) of the Expropriation Act as though they automatically compel nil compensation. Neither proposition is correct.

T.C. A.J.

219 The Expropriation Act requires compensation to be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances.

220 Sections 12(2)(e), 12(3)(a) to (d), and 12(4) are rational, constitutionally compliant, and capable of proper application. They provide guidance in circumstances where nil compensation may, depending on the facts, be just and equitable. They do not remove the right to compensation and they do not oust judicial oversight.

221 I accordingly submit that IRR has failed to make out a case for the relief sought in its notice of motion.

WHEREFORE, the third and fourth respondents pray that IRR's application be dismissed.

A. T. D.

ANGELA THOKOZILE DIDIZA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn before me at 12 on this the day of JUNE 2026, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been

SOUTH AFRICAN POLICE SERVICE
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complied with.

Warrant officer
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COMMISSIONER OF OATHS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

T.C. R.T.

"AA1"

EXPROPRIATION ACT 13 OF 2024[1]

[ASSENTED TO 20 DECEMBER 2024] [DATE OF COMMENCEMENT: TO BE PROCLAIMED]

(see s. 31 of this Act)

You are currently viewing the full Act.

(English text signed by the President)

published in

GG 51964 of 24 January 2025

ACT

To provide for the expropriation of property for a public purpose or in the public interest; to regulate the procedure for the expropriation of property for a public purpose or in the public interest, including payment of compensation; to identify certain instances where the provision of nil compensation may be just and equitable for expropriation in the public interest; to repeal the Expropriation Act, 1975 (Act 63 of 1975); and to provide for matters connected therewith.

Preamble

WHEREAS section 25 of the Constitution of the Republic of South Africa, 1996, provides as follows:

'25 Property

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application-

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-

(a) the current use of the property;

(b) the history of the acquisition and use of the property;

(c) the market value of the property;

(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

(4) For the purposes of this section-

(a) 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; and

(b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).

(9) Parliament must enact the legislation referred to in subsection (6).'; and

WHEREAS section 33 (1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair; and

WHEREAS section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and

WHEREAS uniformity across the nation is required in order to deal effectively with these matters;

AND IN ORDER TO ENABLE expropriation in accordance with the Constitution,

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

ARRANGEMENT OF SECTIONS

CHAPTER 1
DEFINITIONS AND APPLICATION OF ACT

T.C. A7.

1 This Act has been updated to include all available historical commencement details

CHAPTER 1
DEFINITIONS AND APPLICATION OF ACT (ss 1-2)

1 Definitions

(1) In this Act, unless the context indicates otherwise-

'claimant' means a person who has lodged a claim for compensation;

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'court' means a Division of the High Court or a court of similar status within whose area of jurisdiction-

(a) the immovable property in question is situated;

(b) the movable property in question is situated at the time the expropriating authority implements section 5 or 20; or

(c) the owner of the movable or intangible property in question resides or has its principal place of business;

'deliver', in relation to any document, includes delivery by hand, post, registered post and by electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);

'Department' means the Department responsible for Public Works and Infrastructure;

'Director-General' means the Director-General of the Department;

'disputing party' means an owner, mortgagee, holder of a right, including an owner and holder, of a right contemplated in section 20, expropriated owner or expropriated holder, who rejects the expropriating authority's offer of compensation;

'expropriating authority' means an organ of state or person empowered by this Act or any other legislation to expropriate property or to bring about the compulsory acquisition of property contemplated in section 2 (3) for a public purpose or in the public interest;

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'**expropriation**' means the compulsory acquisition of property for a public purpose or in the public interest by an expropriating authority, or an organ of state upon request to an expropriating authority, and '**expropriate**' has a corresponding meaning;

'**holder of a right**' means the holder of an unregistered right in property, but excludes an unregistered owner;

'**land parcel**' means land that has been surveyed and is either registered or yet to be registered in a deeds registry;

'**Master**' means the Master of the High Court for the Division with the necessary jurisdiction;

'**Minister**' means the Minister responsible for Public Works and Infrastructure;

'**notice of expropriation**' means a notice contemplated in section 8;

'**organ of state**' means an organ of state as defined in section 239 of the Constitution;

'**owner**' means the owner of property in terms of the common law and customary law and where the ownership of the property or right in question must be registered, the person in whose name such property or right is registered, and-

(a) if the owner of any property or registered right in land is deceased, means the executor of his or her estate and if no executor has been appointed or his or her appointment has lapsed, the Master;

(b) if the estate of the owner of any property or registered right in land has been sequestrated, means the provisional or final trustee of his or her insolvent estate, as the case may be, or if no such appointment has been made, the Master;

(c) if the owner of any land or registered right in property is a company that is being wound up, means the provisional or final liquidator of that company, or if no such appointment has been made, the Master;

(d) if any property or registered right in property is vested in a liquidator or trustee in terms of any other law, means that liquidator or trustee;

(e) if the owner of any property or registered right in property is otherwise under a legal disability, means his or her representative by law;

(f) if any land or registered right in property has been attached in terms of an order of a court, means the sheriff or deputy sheriff, as the case may be;

(g) in the case of a public place, road or street under the control of a municipality, means that municipality;

(h) for the purposes of section 5, includes a lawful occupier of the land concerned; and

(i) includes an authorised representative of the owner, who is ordinarily resident in the Republic;

'**possession**' includes the exercise of a right;

'**prescribed**' means prescribed by regulation;

'**property**' means property as contemplated in section 25 of the Constitution;

'**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 in order to redress the results of past racial discriminatory laws or practices;

'**public purpose**' includes any purposes connected to the administration of any law by an organ of state, in terms of which the property concerned will be used by or for the benefit of the public;

'**registered**' means registered or recorded with a government office in which rights in respect of land, minerals or any other property are registered or recorded for public record in terms of any law;

'**regulation**' means a regulation made in terms of section 26;

'**service**' means service as contemplated in section 22 (1), and '**serve**' has a corresponding meaning;

'**this Act**' includes any regulations made under this Act;

'**unregistered right**' means a right in property, recognised and protected by law, including customary law, which does not require registration and includes a right to occupy or use land;

'**valuer**' means a person who is suitably qualified to value particular property and includes a person registered as a professional valuer or professional associated valuer in terms of section 19 of the Property Valuers Profession Act, 2000 (Act 47 of 2000).

(2) *(a)* A Saturday, Sunday or public holiday must not be reckoned as part of any period calculated in terms of this Act.

(b) The period 20 December to 7 January inclusive, must not be reckoned as part of any period calculated in terms of this Act.

2 Application of Act

(1) Despite the provisions of any law to the contrary, an expropriating authority may not expropriate property or cause it to be acquired under subsection (3) arbitrarily or for a purpose other than a public purpose or in the public interest.

(2) Subject to section 20, a power to expropriate property may not be exercised unless the expropriating authority has without success attempted to reach an agreement with the owner or holder of a right in property for the acquisition thereof on reasonable terms.

(3) This Act applies, with the necessary changes, to the compulsory acquisition of property directly or indirectly by a third-party beneficiary through an expropriating authority in the public interest, including for the purposes contemplated in section 25 (4) to (8) of the Constitution.

(4) An expropriating authority may expropriate property in terms of a power conferred on it by law of general application and in accordance with sections 5 to 25 and 28.

(5) The power to expropriate includes the power to acquire a right to use property temporarily in terms of section 20.

CHAPTER 2
POWERS OF MINISTER TO EXPROPRIATE (ss 3-4)

3 Powers of Minister to expropriate

(1) Subject to the provisions of Chapter 5, the Minister may expropriate property for a public purpose or in the public interest.

(2) The Minister may expropriate property on behalf of an organ of state, which has been established by or under any law but is not an expropriating authority, if-

(a) the member of the executive responsible for the administration of that law requests the Minister to do so in writing; and

(b) the Minister is satisfied that the organ of state requires the property for a public purpose or in the public interest.

(3) The Minister's power to expropriate property in terms of subsections (1) and (2) includes the power to expropriate property to be used for the provision and management of the accommodation, land and infrastructure needs of an organ of state.

(4) Where only a portion of a land parcel is to be expropriated, the Minister may expropriate that portion together with the remainder of the land parcel, if-

(a) the owner so requests; and

(b) the Minister is satisfied that partial expropriation would impair the use or potential use of the remainder, and that it would be just and equitable to the owner to expropriate the remainder.

(5) When the Minister expropriates property in terms of subsection (2)-

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(a) the ownership of the property vests in the relevant organ of state on the date of expropriation;
(b) the right to possession of the property vests in the relevant organ of state in terms of section 9;
(c) subject to section 9 (5) *(b)*, the relevant organ of state is liable for the fees, duties and other charges which would have been payable by that organ of state in terms of any law as if it had purchased that property; and
(d) all costs incurred by the Minister in the performance of his or her functions on behalf of an organ of state must be refunded by the relevant organ of state within a reasonable time.

4 Delegation or assignment of Minister's powers and duties

(1) Subject to subsection (2), the Minister may delegate or assign, either generally or in relation to a particular property or a particular case, a power or duty under this Act to an official of the Department.

(2) The Minister may not delegate or assign the powers or duties conferred by sections 3, 20 (1), 21 (1) and 26.

CHAPTER 3
INVESTIGATION AND VALUATION OF PROPERTY (ss 5-6)

5 Investigation and gathering of information for purposes of expropriation

(1) The expropriating authority must consider all relevant circumstances when deciding whether to expropriate property and must ascertain-
(a) the suitability of the property for the required purpose;
(b) the existence of registered and unregistered rights in the property; and
(c) facts relevant to calculating an amount of compensation that accords with section 12 and formulate an offer of just and equitable compensation for each person, who would be affected if the property were expropriated.

(2) Subject to subsection (3), if the property is land, an expropriating authority may authorise in writing-
(a) a person with the necessary skills or expertise, for the purposes of subsection (1) *(a)*, to-
(i) enter upon the property with the necessary workers, equipment and vehicles at all reasonable times or as may be agreed to by the owner or occupier of the property;
(ii) survey and determine the area and levels of the land;
(iii) dig or bore on or into the land;
(iv) construct and maintain a measuring weir in any river or stream;
(v) insofar as it may be necessary to gain access to the property, enter upon and go across another property with the necessary workers, equipment and vehicles; and
(vi) demarcate the boundaries of the property required for the said purpose; and
(b) a valuer to enter upon the land and any building on such land and to do the necessary inspections and investigations for the purpose of valuing it.

(3) No person contemplated in subsection (2) may enter the property without written authorisation from the expropriating authority and-
(a) the written consent of the owner or occupier of the property, including the written consent of the owner or occupier of a property contemplated in subsection (2) *(a)* (v), to perform an act contemplated in subsection (2); or
(b) in the event of the owner or occupier refusing or failing to grant consent contemplated in paragraph *(a)*, a court order authorising entry on to the land, including any building thereon, for purposes of conducting the investigations contemplated in subsection (2).

(4) The valuer contemplated in subsection (2) *(b)* may-
(a) require the owner or occupier of the property to give access to a document in the possession or under the control of the owner or occupier which the valuer reasonably requires for the purposes of valuing the property;
(b) extract information from or make copies of a document to which access is given in terms of paragraph *(a)*;
(c) in writing require the owner or occupier of the property to provide, either in writing or orally, particulars of the property that are reasonably required for the purposes of valuing the property; and
(d) despite the provisions of any law to the contrary, require the municipality in whose area the land is situated, to provide-
(i) access to building plans of improvements on such land;
(ii) a copy or copies of building plans relating to the land and any improvements at the cost of the valuer or valuers; and
(iii) information about municipal property rates or other charges, land use rights such as zoning, the availability of engineering services, which information is in the possession of the municipality concerning the land and which is reasonably required for the valuation of the said land by the valuer.

(5) Unless the information has already been obtained, the expropriating authority must-
(a) deliver a notice to the following persons to provide the names and addresses of all holders of rights in the property known to them, as well as particulars of those rights, by written reply within 20 days of delivery of the notice:
(i) The owner;
(ii) a person apparently in charge of the property;
(iii) the holder of a right, known to the expropriating authority; and
(iv) the mortgagee; and
(b) if the property is land, consult-
(i) the Departments responsible for rural development and land reform, for environmental affairs, for mineral resources and for water and sanitation and any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation, for the purposes of establishing the existence of and the impact of expropriation on rights therein; and
(ii) the municipality as contemplated in section 6, unless the expropriating authority is the municipal council.

(6) *(a)* A person contemplated in subsection (2) must-
(i) provide the owner or occupier of the property with a copy of the written authority;
(ii) at all times while performing any authorised act, be in possession of the written authority; and
(iii) provide written identification to the owner or occupier of the property by means of an official identification document.

(b) The owner or occupier of the property may refuse entry to the property to a person contemplated in subsection (2) who fails to comply with paragraph *(a)*, or may refuse to allow an act contemplated in subsection (2).

(7) If the property in question is damaged through an act contemplated in subsection (2), an affected person may deliver written demand to the expropriating authority and the expropriating authority must repair the damage to a reasonable standard or compensate for the damage without undue delay.

(8) Any legal proceedings arising out of a claim under subsection (7) must comply with the Institution of Legal Proceedings Against Certain

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Organs of State Act, 2002 (Act 40 of 2002).

(9) The powers, authority and obligations conferred or imposed by this section are subject to the laws governing the protection of personal and private information, and must be exercised accordingly.

(10) If the property is not land, the expropriating authority may authorise a suitably qualified person or valuer to ascertain its suitability and value for determining an amount of compensation to be offered.

6 Consultation with municipality during investigation

(1) When considering whether to expropriate land, an expropriating authority must, if not already established, make a written request to the municipal manager of the municipality where the land is situated to explain how the contemplated expropriation would affect municipal planning.

(2) The request contemplated in subsection (1) must include-

(a) a statement that the expropriating authority is contemplating the acquisition of land;

(b) a full description of the land in question;

(c) details of the purpose for which the land is required; and

(d) other details that the expropriating authority considers necessary.

(3) The municipal manager must deliver a written response to the request contemplated in subsection (1) within 20 days of receipt or within a reasonable time to be agreed between the expropriating authority and municipal manager.

(4) If the expropriating authority is the municipal council of the municipality where the land is situated, the request contemplated in subsection (1) is not required.

CHAPTER 4
INTENTION TO EXPROPRIATE AND EXPROPRIATION OF PROPERTY (ss 7-11)

7 Notice of intention to expropriate

(1) If an expropriating authority intends to expropriate property, it must-

(a) serve a notice of intention to expropriate on the owner, mortgagee and holder of a right known to it at the time; and

(b) publish the notice of intention to expropriate under section 22 (2).

(2) A notice of intention to expropriate must include-

(a) a statement of the intention to expropriate the property;

(b) a full description of the property;

(c) a short description of the purpose for which the property is required;

(d) the address at which documents detailing the purpose of the expropriation may be inspected and at which particulars of the purpose may be obtained during business hours;

(e) the reason for the intended expropriation of that particular property;

(f) the intended future date of expropriation;

(g) the future date on which the expropriating authority intends to take possession of the property;

(h) an invitation to any person who may be affected by the intended expropriation to lodge with the expropriating authority within 30 days after the publication of the said notice-

(i) any objections to the intended expropriation;

(ii) any submissions relating to the intended expropriation;

(iii) a postal address, email address or facsimile number for the expropriating authority to communicate with that person; and

(iv) the preference of official language for further written communication;

(i) the names of the recipients of the notice and their interest in the property;

(j) a directive to the owner, mortgagee and a holder of a right contemplated in subsection (1) *(a)* to deliver, within 30 days of service of the notice, a written list of the names and addresses of any holders of rights, other than those listed, and particulars of those rights of which the recipient is aware;

(k) an offer of compensation which the expropriating authority considers just and equitable and an explanation of how the amount was arrived at with reference to supporting information;

(l) a statement that the expropriating authority may adjust the amount of compensation under sections 10 and 11, if a holder of a right, of whom the expropriating authority had no prior knowledge, later claims compensation;

(m) a statement drawing attention to sections 14, 19, 23 and 25; and

(n) the details of the empowering law authorising the intended expropriation.

(3) If the property is land, the expropriating authority must also deliver a copy of the notice referred to in subsection (1) to-

(a) the Directors-General responsible for rural development and land reform, for environmental affairs, for mineral resources and for water and sanitation, and the accounting authority of any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation: Provided that if the expropriating authority is the executive authority of one of the departments or organs of state concerned, delivery of such notice to the relevant Director-General or accounting authority is not required; and

(b) the municipal manager of the municipality where the property is situated, unless the expropriating authority is the municipal council.

(4) A person responding to a notice contemplated in subsection (1), within 30 days of the service or publication of the notice, must-

(a) deliver to the expropriating authority a written statement-

(i) stating whether he or she accepts the offer of compensation;

(ii) requesting further particulars under section 14; or

(iii) disputing, in terms of section 19, the amount of compensation offered;

(b) if the property is land, give the name and address of-

(i) the lessee, whose unregistered lease of the whole or part of the property was concluded before the notice was issued, together with the lease or a certified copy;

(ii) the buyer, to whom the property was sold but not yet transferred before the notice was issued, together with the contract of purchase and sale or a certified copy; or

(iii) the builder, who erected a building on the property in terms of a written building contract and holds a builder's lien, along with the building contract or a certified copy; and

(c) state the address at which further documents in connection with the expropriation may be sent and the preferred language of communication.

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(5) The expropriating authority must consider the statements contemplated in subsection (4), as well as any objections or submissions lodged in terms of subsection (2) *(h)*, in deciding whether to proceed with the expropriation of the property.

(6) *(a)* The expropriating authority may decide to expropriate the property after the compensation, the amount of which and the time and manner of payment of which have been agreed with the owner, mortgagee or holder of a right, or approved or decided by a court, subject to section 19 (8).

(b) If the expropriating authority decides-

(i) to expropriate, it must serve a notice of expropriation in terms of section 8 (1) within a reasonable time; or

(ii) not to expropriate, it must inform the owner, mortgagee or holder of a right accordingly in writing within a reasonable time and must publish a notice in the *Gazette* of his or her decision not to proceed in terms of section 22 (2).

8 Notice of expropriation

(1) If the expropriating authority decides to expropriate the property, the expropriating authority must cause a notice of expropriation to be served upon the expropriated owner, mortgagee and expropriated holder of a right in their preferred language.

(2) The expropriating authority must cause a copy of the notice of expropriation to be-

(a) published in accordance with section 22 (1) *(c)* or (2);

(b) delivered to a known holder of a right whose rights have not been expropriated; and

(c) if the property is land, delivered to-

(i) the municipal manager of the municipality where the property is situated, unless the expropriating authority is the municipal council;

(ii) the Directors-General responsible for rural development and land reform, environmental affairs, mineral resources, and for water and sanitation, and the accounting authority of any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation;

(iii) if the expropriating authority is the executive authority of one of the departments or organs of state referred to in subparagraph (ii), delivery of the notice to the Director-General of that department or accounting authority of that organ of state is not required;

(iv) a mortgagee if the land is encumbered by a registered mortgage bond;

(v) the buyer, if the property is subject to a contract contemplated in section 7 (4) *(b)* (ii); and

(vi) the builder, if a building on the property is subject to a lien contemplated in section 7 (4) *(b)* (iii).

(3) The notice of expropriation must contain-

(a) a statement of the expropriation of the property;

(b) the full description of the property, including-

(i) in the case where the expropriation applies to a portion of a land parcel, the approximate extent of such portion in relation to the whole; or

(ii) where the expropriation applies to a right in land, a description of the approximate area and position of the land subject to the right;

(c) a short description of the purpose for which the property is required and the address at which documents setting out that purpose may be inspected and particulars of that purpose may be obtained during business hours;

(d) the reason for the expropriation of that particular property;

(e) the date of expropriation or, where the expropriation is for the temporary use of the property as contemplated in section 20, the intended period of such temporary use;

(f) the future date on which the right to possession of the property will pass to the expropriating authority after expropriation;

(g) subject to section 20, the amount of compensation agreed upon or approved or decided by a court under section 19; and

(h) the details of the empowering law authorising the expropriation.

(4) The notice of expropriation served in terms of subsection (1) must be accompanied by documents detailing the following:

(a) The date or dates on which the expropriating authority proposes to pay the compensation and any interest payable in respect thereof in terms of section 13;

(b) where the expropriation applies to a portion of a land parcel, a survey diagram or sketch plan showing the approximate position of such portion in relation to the whole;

(c) where the expropriation applies to a right in land, a survey diagram or sketch plan on which the approximate position of the right in land on such land is indicated, unless the right in land is accurately described without such survey diagram or sketch plan;

(d) an explanation of how the amount of compensation was arrived at, together with supporting documents;

(e) a statement that the expropriating authority may adjust the amount of compensation, if a holder of a right, of whom the expropriating authority had no prior knowledge before the compensation was agreed on or approved or decided by a court, later claims compensation; and

(f) a statement drawing the attention of the expropriated owner, expropriated holder of a right or any other affected person to the provisions of section 25.

(5) If the property expropriated is land-

(a) the expropriated owner must deliver or cause to be delivered to the expropriating authority, subject to section 23, within 30 days of the expropriating authority requesting the title deed to such land or, if it is not in his or her possession or under his or her control, written particulars of the name and address of the person in whose possession or under whose control the title deed is; and

(b) the person referred to in paragraph *(a)* in whose possession the title deed may be, must deliver or cause to be delivered the title deed in question to the expropriating authority within 20 days of the expropriating authority requesting it, subject to section 23.

9 Vesting and possession of expropriated property

(1) The effect of an expropriation of property is that-

(a) subject to paragraphs *(c)* and *(d)*, the ownership of the property described in the notice of expropriation vests in the expropriating authority or in the person on whose behalf the property was expropriated, as the case may be, on the date of expropriation;

(b) all unregistered rights in such property are simultaneously expropriated on the date of expropriation unless-

(i) the expropriation of those unregistered rights is expressly excluded in the notice of expropriation; or

(ii) those rights, including permits or permissions, were granted or exist in terms of the provisions of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

(c) in the case of a right to use property temporarily, the expropriating authority or the person on whose behalf the property was expropriated may as from the date of expropriation exercise that right for its duration;

(d) with the exception of a mortgage, the property remains subject to all registered rights in favour of third parties, with which the

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property was burdened prior to expropriation, unless or until such registered rights are expropriated from the holder of a right; and

(e) the date of expropriation may not be before the date of service of the notice of expropriation.

(2) *(a)* The expropriating authority, or the person on whose behalf the property was expropriated, must take possession of the expropriated property on the date stated in terms of section 8 (3) *(f)* or such other date as may be agreed upon with the expropriated owner or expropriated holder of a right.

(b) The right to possession passes on the relevant date contemplated in paragraph *(a)* to the person referred to therein.

(3) *(a)* The expropriated owner or expropriated holder of a right who is in possession of the property concerned must take all reasonable steps to maintain the property from the date of expropriation to the date referred to in subsection (2) or (4).

(b) The expropriating authority may recover the amount for the loss of value caused by the wilful or negligent failure of an expropriated owner or the expropriated holder of a right to maintain the property.

(c) The expropriating authority must compensate the expropriated owner or expropriated holder of a right for costs necessarily incurred after the date of expropriation in respect of such maintenance.

(4) If the expropriated owner or expropriated holder of a right wishes to transfer the right to possession of the property before the date contemplated in section 8 (3) *(f)* but the expropriating authority does not agree, the expropriated owner or expropriated holder of a right may pass the right to possession to the expropriating authority by giving the expropriating authority prior written notice of at least 20 days.

(5) The expropriated owner or expropriated holder of a right who is in possession of the property from the date of expropriation to the date referred to in subsection (2) *(b)*, remains-

(a) entitled to the use of and the income from the expropriated property; and

(b) responsible for the municipal property rates, taxes, levies and other charges, and normal operating costs in respect of the expropriated property.

10 Verification of unregistered rights in expropriated property

(1) If, after the date of expropriation, a person claims to have held an unregistered right in the expropriated property, for which that person has not been compensated, and was not served with a notice of expropriation, the expropriating authority must request that person to deliver to the expropriating authority, in the manner prescribed in the notice within 30 days of receipt and subject to section 23-

(a) evidence of that person's unregistered right in the expropriated property; or

(b) a copy of any written instrument evidencing or giving effect to that person's unregistered right, if such instrument is in the person's possession or under the person's control, or any other evidence to substantiate the person's claim.

(2) If the unregistered right, claimed as contemplated in subsection (1), pertains to the use of improvements on expropriated land, the evidence required in terms of subsection (1) must include-

(a) a full description of those improvements;

(b) an affidavit or affirmation by the person concerned stating whether those improvements were erected by that person and if so, whether the materials used for erecting those improvements were owned by that person; and

(c) the amount claimed as compensation for such unregistered right, together with details or a report, if any, on how the amount is computed.

(3) After receipt of the evidence requested in terms of subsection (1) and if the unregistered right claimed pertains to land, the expropriating authority may forward that evidence to the Directors-General responsible for rural development and land reform, for environmental affairs, for mineral resources and for water and sanitation, and to the accounting authority of any other organ of state, as the case may be, for assistance in the verification of such claim.

(4) A Director-General or accounting authority referred to in subsection (3) must submit comments within 30 days of receipt of the request for assistance in the verification of the claim as contemplated therein.

(5) *(a)* The expropriating authority must decide on the claim contemplated in subsection (1) within 20 days of expiry of the period referred to in subsection (4) and notify the claimant in writing of the decision.

(b) If the expropriating authority accepts the claim contemplated in subsection (1), the expropriating authority must serve the notice contemplated in section 11 (2) on such claimant.

(c) If the expropriating authority does not accept the claim contemplated in subsection (1), the expropriating authority must inform the claimant accordingly in writing and must provide reasons for the rejection.

(6) The expropriating authority may require the expropriated owner to compensate a person who held an unregistered right, if that person was not given notice of the expropriation as provided in this Act, and if the owner ought reasonably to have identified that person in terms of section 7 (2) *(j)* but did not do so.

(7) The expropriating authority may exercise the power in terms of subsection (6) only after giving the expropriated owner a reasonable opportunity to make representations in that regard.

11 Consequences of expropriation of unregistered rights and duties of expropriating authority

(1) A person who becomes an expropriated holder of a right by the operation of section 9 (1) *(b)*, subject to section 10 and this section, is entitled to compensation.

(2) If the expropriating authority becomes aware that an unregistered right in the expropriated property has been expropriated by the operation of section 9 (1) *(b)* and becomes aware of the identity of the expropriated holder of a right thereof, the expropriating authority must serve on that expropriated holder of a right a notice that the unregistered right has been expropriated, together with a copy of the notice of expropriation served on the expropriated owner in terms of section 8 (1).

(3) The notice contemplated in subsection (2) must-

(a) inform the expropriated holder of a right of the date on which the right to possession of the expropriated property passed to the expropriating authority in terms of section 9 (2) or (4);

(b) contain a statement contemplated in section 8 (3) *(f)*, if applicable; and

(c) except if this information was furnished in terms of section 10 (1), request the expropriated holder of a right to deliver to the expropriating authority, within 20 days of receipt of the notice, subject to section 23, a copy of any written instrument in their possession or under their control which evidences the unregistered right.

(4) When a notice in terms of subsection (2) has been served on the expropriated holder of a right concerned, this Act applies with the changes required by the context as if such notice were a notice of expropriation in terms of section 8 (1) in respect of such unregistered right, but if that expropriated holder of a right is a lessee, he or she remains liable to pay rental to the expropriated owner until the right to possession passes in terms of section 9 (2) or (4) and, if applicable, thereafter to the expropriating authority.

(5) If the expropriated owner or expropriated holder of a right knew of the existence of an unregistered right contemplated in subsection (2) and failed to inform the expropriating authority of the existence thereof, the expropriated owner or expropriated holder of a right, as the case may be, is liable to the expropriating authority for any loss incurred in the event of the expropriating authority having to pay compensation for the expropriation of the unregistered right after the date of payment of compensation to the expropriated owner or expropriated holder of a

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right, as the case may be.

CHAPTER 5
COMPENSATION FOR EXPROPRIATION (ss 12-18)

12 Determination of compensation

(1) The amount of compensation must be just and equitable reflecting an equitable balance between the public interest, the interests of those affected, including an owner, holder of a right a mortgagee [sic], having regard to all relevant circumstances, including-

(a) the current use of the property;

(b) the history of the acquisition and use of the property;

(c) the market value of the property;

(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

(2) In determining the amount of compensation to be paid in terms of this Act, the expropriating authority must not, unless there are special circumstances in which it would be just and equitable to do so, take account of-

(a) the fact that the property has been taken without the consent of the owner or holder of a right;

(b) the special suitability or usefulness of the property for the purpose for which it is required by the expropriating authority, if it is unlikely that the property would have been purchased for that purpose in the open market;

(c) any enhancement in the value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;

(d) improvements made to the property in question after the date on which the notice of expropriation was served upon the expropriated owner or expropriated holder, as the case may be, except where the improvements were agreed to in advance by the expropriating authority or where they were undertaken in pursuance of obligations entered into before the date of expropriation;

(e) anything done with the object of obtaining compensation therefor; and

(f) any enhancement or depreciation, before or after the date of service of the notice of expropriation, in the value of the property in question, which can be directly attributed to the purpose in connection with which the property was expropriated.

(3) It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to-

(a) where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value;

(b) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;

(c) notwithstanding registration of ownership in terms of the Deeds Registries Act, 1937 (Act 47 of 1937), where an owner has abandoned the land by failing to exercise control over it despite being reasonably capable of doing so;

(d) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.

(4) When a court or arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996), it may be just and equitable for nil compensation to be paid, having regard to all relevant circumstances.

(5) If the property is land, the expropriating authority must consider the amount of outstanding municipal property rates, taxes, levies and charges relating to the property when making an offer of just and equitable compensation.

13 Interest on compensation

Interest, at the rate determined from time to time in terms of section 80 (1) *(b)* of the Public Finance Management Act, 1999 (Act 1 of 1999), from the date the expropriating authority, or the person on whose behalf the property was expropriated, takes possession of the expropriated property, accrues on any outstanding portion of the amount of compensation payable in accordance with section 12 and becomes payable in the manner contemplated in section 15: Provided that-

(a) until the claimant complies with the requirement of section 15 (5), the amount so payable during the period of such failure and for the purposes of the payment of interest, is not regarded as an outstanding amount, provided that if the expropriated owner or expropriated holder of a right disputes the amount of compensation, it may issue a provisional tax invoice for the amount of compensation offered without prejudice to its right to dispute the amount of compensation offered by the expropriating authority;

(b) interest due in terms of this subsection must be regarded as having been paid on the date on which the amount has been made available or has been electronically transferred to the bank account of the expropriated owner or of the expropriated holder of a right, or in a manner as agreed to by the parties or as decided or approved by a court in terms of section 19, as the case may be; and

(c) a payment, utilisation or deposit of an amount in terms of section 15 (1), 17 (2) or 18 (1) or (2) must be regarded as being a payment to the expropriated owner or an expropriated holder of a right and no interest accrues on any such amount as from the date on which it has been so paid, utilised or deposited.

14 Requests for particulars

(1) The owner, mortgagee and holder of a right may request the expropriating authority, in writing, to provide reasonable particulars about the offer of compensation and particulars so requested must be furnished within 20 days of such request.

(2) If the expropriating authority fails to provide the requested particulars, the person making such a request in terms of subsection (1) may, on notice, apply to a court for an order directing the expropriating authority to comply with subsection (1) and the court may make such an order.

(3) An offer of just and equitable compensation remains in force until-

(a) revised by the expropriating authority;

(b) the amount of compensation has been agreed upon; or

(c) the compensation has been decided or approved by a court.

15 Payment of compensation

(1) Subject to sections 16, 17 and 18, an expropriated owner or expropriated holder of a right is entitled to payment of compensation on the date and in the manner as agreed to by the parties or as decided or approved by a court in terms of section 19.

(2) The payment, utilisation or deposit of any amount contemplated in sections 16, 17 and 18 does not preclude the determination of an amount by agreement or by a court: Provided that where the amount so determined is less than the amount paid, the difference must be refunded to the expropriating authority together with interest at the rate contemplated in section 13 from the date on which the amount was so paid, utilised or deposited.

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(3) Any delay in payment of compensation to the expropriated owner or expropriated holder of a right by virtue of subsection (2), or any other dispute arising after the expropriating authority has decided to expropriate will not prevent the passing of the right to possession to the expropriating authority in terms of section 9 (2) or (4), unless a court orders otherwise.

(4) If the expropriating authority, expropriated owner or expropriated holder of a right has proposed a later date than the date contemplated in subsection (1) for the payment of compensation, the party proposing later payment may, in the absence of agreement, apply to court for an order for payment on such later date, and the court may make an appropriate order, having regard to all relevant circumstances.

(5) If value-added tax is leviable by a claimant in terms of section 7 (1) *(a)* of the Value-Added Tax Act, 1991 (Act 89 of 1991), by virtue of section 8 (21) of that Act, payment of compensation must be made by the expropriating authority only upon receipt of a tax invoice as required in terms of section 20 of that Act from the claimant, together with confirmation of the tax compliance status of the claimant by the South African Revenue Service.

(6) The Minister may prescribe the information and documentation to be delivered by a person to whom compensation or interest is payable in terms of this Act, in order to facilitate electronic payment thereof.

16 Property subject to mortgage or deed of sale

(1) If property expropriated in terms of this Act was, immediately prior to the date of expropriation, encumbered by a registered mortgage or subject to a deed of sale, the expropriating authority may not pay out any portion of the compensation money except to such person and on such terms as may have been agreed upon between the expropriated owner or expropriated holder of a right and the mortgagee or buyer concerned, as the case may be, after the claimant has notified the expropriating authority of the agreement.

(2) The expropriated owner or expropriated holder of a right or the mortgagee or buyer, as the case may be, must notify the expropriating authority by no later than 30 days from the date contemplated in section 9 (2) or (4), of their agreement and its terms contemplated in subsection (1), failing which the expropriating authority may deposit the compensation money with the Master in terms of section 18 (2).

(3) In the event of a dispute arising out of subsection (1), the expropriating authority may deposit the compensation money with the Master, and any of the disputing parties may apply to a court of competent jurisdiction for an order directing the Master to pay out the compensation money in such manner and on such terms as the court may determine.

17 Payment of municipal property rates, taxes and other charges out of compensation money

(1) The expropriating authority must pay outstanding municipal rates, taxes, levies and other charges out of the compensation money.

(2) If land which has been expropriated is subject to the charges contemplated in subsection (1), the municipal manager must, within 30 days of receipt of a copy of the notice of expropriation in terms of section 8 (2) *(c)* (i), inform the expropriating authority in writing of such charges, as at the date contemplated in section 9 (2) or (4), unless the expropriating authority is the municipal council of the municipality where the land is situated.

(3) *(a)* The expropriating authority must, in writing, notify the expropriated owner or expropriated holder of a right of any outstanding charges contemplated in subsection (1).

(b) If the expropriated owner or expropriated holder of a right does not dispute the outstanding charges contemplated in paragraph *(a)*, within 20 days of the notification, the expropriating authority may utilise as much of the compensation money in question as is necessary for the payment, on behalf of the expropriated owner or expropriated holder of a right, of any outstanding charges contemplated in subsection (1).

(4) If the municipal manager fails to inform the expropriating authority of the outstanding charges contemplated in subsection (1) within the period of 30 days as contemplated in subsection (2), the expropriating authority may pay the compensation to the expropriated owner or expropriated holder of a right without regard to the outstanding municipal property rates or other charges, and in such an event and despite the provisions of any law to the contrary-

(a) the Registrar of Deeds must register the transfer of the expropriated property;

(b) the expropriating authority or the person on whose behalf the property was expropriated, as the case may be, is not liable to the municipality concerned before or after such registration for the outstanding municipal property rates or other charges; and

(c) despite the provisions of any other law, the expropriated owner remains liable to the municipality for rates and other charges levied on the property until the right to possession vests in the expropriating authority in terms of section 8 (3) *(f)* or section 9 (4).

18 Deposit of compensation money with Master

(1) The expropriating authority must deposit the amount of compensation payable in terms of this Act with the Master after which the expropriating authority ceases to be liable in respect of that amount-

(a) if a property expropriated under this Act was left in terms of a will or testament to an undetermined beneficiary or beneficiaries;

(b) if compensation is payable in terms of this Act to a person whose address is not readily ascertainable or who, unless otherwise agreed, fails to supply the prescribed information and documentation for electronic payment within 20 days of being given written notice to do so; or

(c) if compensation is payable and the expropriating authority, after reasonable endeavours, is unable to determine to whom it must be paid.

(2) In the event of a dispute or doubt as to the person who is entitled to receive compensation payable in terms of this Act, or in the event that an interdict prevents the expropriating authority from paying compensation to that person, the expropriating authority may deposit the amount of compensation with the Master.

(3) Any money received by the Master in terms of subsection (1) or (2) must be paid into the guardian's fund referred to in section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), for the benefit of the persons who are or may become entitled thereto and bear interest at the interest rate determined in terms of section 80 (1) *(b)* of the Public Finance Management Act, 1999 (Act 1 of 1999).

(4) A court of competent jurisdiction may make an order which it may deem expedient in respect of money received by the Master in terms of subsection (1) or (2).

CHAPTER 6
MEDIATION AND DETERMINATION BY COURT (s 19)

19 Mediation and determination by court

(1) If the expropriating authority and a disputing party do not agree on the amount, time and manner of payment of compensation, they may attempt to settle the dispute by mediation, which must be initiated and finalised without undue delay by either party.

(2) If the expropriating authority and disputing party do not settle the dispute by consensus or mediation, either party may, within 180 days of the date of the notice of expropriation, institute proceedings in a competent court for the court to decide or approve the amount, time and manner of payment of just and equitable compensation.

(3) The disputing party may, instead of instituting such proceedings himself or herself, within 90 days of the date of the notice of expropriation request the expropriating authority, in writing, to institute such proceedings and the expropriating authority must institute such proceedings within 180 days of receiving such request.

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(4) A court may extend the time periods in subsections (2) and (3) on good cause shown and if the interests of justice so require.

(5) The onus or burden of proof is not affected by whether it is the expropriating authority or the disputing party which institutes the proceedings referred to in this section.

(6) Subsection (2) does not preclude a person from approaching a court on any matter relating to the application of this Act.

(7) Where a court finds that a provision of this Act has not been complied with, it may make such order as it considers just and equitable, having regard to all relevant circumstances, including-

(a) the nature and extent of the interest of the person who has challenged the conduct in question;

(b) the materiality of the non-compliance;

(c) the stage which has been reached in the expropriation process; and

(d) the interests of other persons which may be affected by the relief which is ordered.

(8) Despite section 18 of the Superior Courts Act, 2013 (Act 10 of 2013), any appeal against the decision of a court on the amount of compensation will not prevent the expropriating authority from expropriating for the amount approved or decided, unless a court grants an interim interdict based on compelling prospects of success of the appeal.

(9) A court may make any order as to costs that it considers just and equitable for proceedings contemplated in subsections (2) and (3).

CHAPTER 7
URGENT EXPROPRIATION (s 20)

20 Urgent expropriation

(1) An expropriating authority may, if a property is required on an urgent basis for public purpose or in the public interest, exercise a right to use property temporarily for so long as it is urgently required but for no longer than 12 months.

(2) The power referred to in subsection (1) may be exercised only if suitable property held by the national, provincial or local government is not available and under the following circumstances:

(a) in the case of a disaster as defined in the Disaster Management Act, 2002 (Act 57 of 2002); or

(b) where a court grants an order that an expropriating authority is entitled to use the provisions of this section due to-

(i) urgent and exceptional circumstances that justify action under subsection (1);

(ii) real and imminent danger to human life or substantial injury or damage to property; or

(iii) any other ground which in the view of the court justifies action under subsection (1).

(3) Save for section 7 (6) *(a)*, the remaining provisions of this Act apply to urgent expropriations, but the expropriating authority may-

(a) depart from the following provisions, if the degree of urgency so requires:

(i) Sections 5 (3) and (5);

(ii) section 6;

(iii) sections 7 (2) *(h)*, 7 (2) *(j)*, 7 (2) *(k)*, 7 (2) *(l)*, 7 (4) *(a)* and 7 (5); and

(iv) section 15 (1); and

(b) reduce the periods in the following provisions to a reasonable period, given the degree of urgency:

(i) Section 6 (3); and

(ii) sections 7 (2) *(h)*, 7 (2) *(j)* and 7 (4).

(4) The owner or the holder of a right whose right in property has been taken for temporary use in terms of this section is entitled to just and equitable compensation as calculated, agreed or decided by courts and paid in terms of this Act.

(5) If not already done in terms of section 7 (2) *(k)*, expropriating authority must make a written offer of compensation to the expropriated owner or expropriated holder of a right of a right [sic] as soon as reasonably possible, but no later than 30 days from the date on which the notice to use the property temporarily was given, and payment must be made as soon as reasonably possible thereafter: Provided that in the event of any dispute, section 19 applies.

(6) If the property in question is damaged as a result of the performance of an act contemplated in subsection (1), the expropriating authority must repair to a reasonable standard, or compensate the affected person for that damage after delivery of a written demand by the affected person and without undue delay.

(7) *(a)* If an expropriating authority wishes to extend the period of temporary usage beyond 12 months and the owner or the holder of a right whose right in property has been taken does not agree thereto, the expropriating authority may approach the court for an extension of the period.

(b) The court may, on sufficient cause shown by the expropriating authority, extend the period of temporary usage.

(c) The period of extension may not exceed 18 months from the date the property was taken for temporary use in terms of subsection (1).

(8) If the court refuses to grant an extension as applied for in terms of subsection (7), the expropriating authority must return or vacate the property on the expiry of the period of temporary use or on the date agreed to by the parties or determined by the court.

(9) An expropriating authority may at any time during the temporary use of the property, commence with the expropriation of the ownership of the property, and must comply with all relevant provisions of this Act.

(10) If the property is land, the expropriating authority becomes liable for the municipal property rates, taxes, levies and similar charges from the date of expropriation.

CHAPTER 8
WITHDRAWAL OF EXPROPRIATION (s 21)

21 Withdrawal of expropriation

(1) *(a)* Notwithstanding anything to the contrary contained in any law, the expropriating authority may withdraw any expropriation from a date mentioned in a notice of withdrawal, if the withdrawal of that expropriation is in the public interest, or the reason for which the property was expropriated is no longer applicable.

(b) The notice of withdrawal contemplated in paragraph *(a)* must be served on every person on whom the notice of expropriation in question was served.

(2) An expropriation may not be withdrawn-

(a) after the expiration of three months from the date of expropriation, except with the written consent of the expropriated owner and all expropriated holders of a right or, in the absence of a written consent, if a court, on application by the expropriating authority, authorises the withdrawal on the ground that it is in the public interest that the expropriation be withdrawn;

(b) if, where the expropriated property is land, the property has already been registered in the name of the expropriating authority in

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consequence of the expropriation; or

(c) if the expropriating authority has already paid compensation in connection with such expropriation, unless the agreement in writing of every person to whom the compensation has been paid is obtained.

(3) If an expropriation of property is withdrawn-

(a) ownership of the property concerned again vests, from the date contemplated in subsection (1), in the owner from whom it was expropriated, and any mortgage or other rights discharged or expropriated in connection with or as a consequence of the expropriation are fully revived;

(b) the Registrar of Deeds or the registrar of any other office at which such expropriated right was registered or recorded must, on receipt of a copy of the notice of withdrawal, cancel any endorsement made in connection with the expropriation in his or her registers and on the title deed in question; and

(c) the expropriating authority is liable for all reasonable costs and damages incurred or suffered by a claimant as a result of such withdrawal.

CHAPTER 9
RELATED MATTERS (ss 22-31)

22 Service and publication of documents and language used therein

(1) Whenever a notice in terms of sections 7 (1), 8 (1), 11 (2) or 17 (3) *(a)* or a notice of withdrawal in terms of section 21 (1) *(b)* is required to be served in terms of this Act, the original or a certified copy thereof must-

(a) be delivered or tendered to the addressee personally at his or her residential address, place of work, place of business or at such address or place as the expropriating authority and the addressee may, in writing, agree upon;

(b) be posted by pre-paid registered post to the postal address of the addressee and delivered electronically to the electronic mail address of the addressee;

(c) be published in the manner contemplated in subsection (2)-

(i) if the whereabouts of the person concerned are unknown to the expropriating authority and is not readily ascertainable, after taking reasonable steps; or

(ii) if the identity of an heir or legatee, whose interest has passed or will pass to another person on the fulfilment of a condition, is unknown to the expropriating authority; or

(d) if none of the modes of service set out in paragraphs *(a)* to *(c)* is practicable under the circumstances, be served in accordance with such directions as the court, on application, may direct.

(2) Whenever the publication of a notice is required in terms of section 7 (1) or (6) *(b)* (ii), or the publication of a notice of expropriation or other document is required by this Act, such publication must take place-

(a) in English and in any other official language commonly used in the area where the property is situated, once in the *Gazette* and, simultaneously therewith or not more than one week thereafter, once in two widely circulated and accessible newspapers of different languages circulating in the area in which the property is situated;

(b) if the property is land, by the display of the notice in the languages referred to in paragraph *(a)*, on such land in a conspicuous place, from not later than the date of publication in the *Gazette* contemplated in paragraph *(a)*; and

(c) if the expropriating authority deems it necessary in the circumstances, by the advertising in such languages as may be appropriate on television or radio, transmitting to the area where the property is situated in the languages commonly used in that area, the contents of the advertisement to adhere as closely as is practicable to the contents of the notice or document so advertised.

(3) Whenever a document must or may be delivered in terms of this Act, it must take place by delivering-

(a) to the owner and holder of an unregistered right in a property known to the expropriating authority, at the address appointed in the notice in terms of section 7 (1), the notice of expropriation, the notice in terms of section 11 (2) or other document, as the case may be; and

(b) to any owner, holder of an unregistered right, person who has lodged an objection or submission contemplated in section 7 (2) *(h)*, expropriated owner and expropriated holder of a right, at the address or facsimile number appointed by such person in terms of this Act, or in the absence thereof-

(i) at an address supplied in respect of such person in terms of this Act;

(ii) at the residential or postal address of such person, if known to the expropriating authority; or

(iii) if no address of such person is known to or readily ascertainable by the expropriating authority, by publication in the manner contemplated in subsection (2) *(a)*.

(4) The delivery contemplated in subsection (3) must take place at the address in question either by-

(a) hand;

(b) facsimile transmission: Provided that a confirmatory copy of the document is sent by ordinary mail or by any other suitable method within one day of such transmission;

(c) registered post;

(d) electronic mail; or

(e) in any other manner which may be prescribed by the Minister.

(5) All documents must be in English and if an addressee has prior to a communication expressed in writing a preference for another official language, also in that preferred other official language.

(6) Every addressee who has received a written communication from the expropriating authority is entitled to request, in writing, a translation of that communication into the official language indicated in the request.

23 Extension of time

(1) An expropriating authority may extend any period, which is applicable to persons mentioned in paragraphs *(a)* and *(b)*, in terms of this Act on written request and good cause shown:

(a) The relevant owner or holder of a right or other interested or affected person for a further period or periods as may be reasonable in the circumstances;

(b) by another organ of state or functionary for a further period or periods as may be reasonable in the circumstances, but not more than double the original period.

(2) An expropriating authority may extend any period applicable to itself in terms of this Act, if-

(a) the owner, holder of a right or interested and affected person agrees to a written request by the expropriating authority; or

(b) there is good cause for the extension.

(3) For the purposes of subsections (1) and (2), good cause may include circumstances where compliance with the provision requires-

(a) searching for and compiling a large number of documents and compliance with the original period would unreasonably interfere with

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the activities of the organ of state concerned, or would impose an unreasonable burden on the persons contemplated in subsection (1) *(a)*;

(b) searching for and compiling information or documents from a source not situated in the same town or city, as may be reasonable in the circumstances, the persons contemplated in subsections (1) *(a)*, *(b)* and (2), the completion of which cannot reasonably be completed within the original period;

(c) consultation among divisions of the organ of state or another organ of state, which is necessary and desirable for the purposes of this Act, but which cannot reasonably be completed within the original period; or

(d) more than one of the circumstances contemplated in paragraphs *(a)*, *(b)* and *(c)* exist, making compliance with the original period not reasonably possible.

(4) If the expropriating authority extends a period-

(a) in terms of subsection (1), it must notify the requestor as soon as reasonably possible, but in any event within 20 days of the outcome of the request; and

(b) in terms of subsection (2), it must notify the owner, holder of a right or interested and affected person as soon as reasonably possible, but in any event within 20 days, of making the extension.

(5) The notice in terms of subsection (4) must-

(a) state the duration of the extension;

(b) give adequate reasons for the extension, including the provisions of the Act relied on; and

(c) if the recipient is a person contemplated in subsection (1) *(a)*, draw attention to the provisions of section 19 (6).

24 Expropriation register

(1) The Director-General must ensure that a register of all expropriations that are intended, effected and withdrawn, and of decisions not to proceed with a contemplated expropriation by all expropriating authorities, is opened, maintained and accessible to the public.

(2) All expropriating authorities must deliver to the Department a copy of any notice of an intended expropriation, notice of expropriation and notice of withdrawal of expropriation, and of any decision not to proceed with an intended expropriation, within 20 days of the service or delivery of such notices.

25 Offences and fines

(1) An owner or holder of a right commits a breach of this Act if that person fails to-

(a) comply with a directive by the expropriating authority in terms of section 7 (2) *(j)*; or

(b) deliver to the expropriating authority a statement contemplated in section 7 (4) *(b)*.

(2) A civil court may impose a civil penalty up to a maximum prescribed amount, in favour of the National Revenue Fund, on a person referred to in subsection (1), upon application by the expropriating authority brought on notice to the affected person.

(3) The rules of the relevant court apply to the application referred to in subsection (2).

(4) A breach referred to in subsection (1) is not a criminal offence.

(5) A person who wilfully furnishes false or misleading information in any written instrument which he or she by virtue of this Act delivers or causes to be delivered to an expropriating authority, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding three years.

26 Regulations

(1) The Minister may, by notice in the *Gazette*, make regulations regarding-

(a) any matter that may or must be prescribed in terms of this Act for its proper implementation, including administrative and procedural matters;

(b) any ancillary or incidental administrative or procedural matter that may be necessary for the proper implementation or administration of this Act;

(c) any notice or document required in terms of this Act; and

(d) any maximum civil penalty as contemplated in section 25 (2).

(2) *(a)* The Minister must, before making any regulations contemplated in subsection (1), publish the draft regulations for public comment.

(b) The period for submitting comments must be at least 20 days from the date of publication of the draft regulations.

27 Regulations, legal documents and steps valid under certain circumstances

(1) A regulation or notice, or an authorisation, document, made or issued in terms of this Act-

(a) but which does not comply with any procedural requirement of this Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person; and

(b) may be amended or replaced without following a procedural requirement of this Act if-

(i) the purpose is to correct an error; and

(ii) the correction does not change the rights or interests duties [sic] of any person materially.

(2) The failure to take any steps in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure-

(a) is not material;

(b) does not prejudice any person; and

(c) is not procedurally unfair.

28 Interpretation of other laws dealing with expropriation

(1) Subject to section 2, any law dealing with expropriation of property that was in force immediately before the date on which this Act came into operation, must be interpreted in a manner consistent with this Act, and for that purpose any reference in any such law to-

(a) a functionary authorised to expropriate property, must be construed as a reference to an expropriating authority; and

(b) compensation as provided for in sections 12 and 13 of the Expropriation Act, 1975 (Act 63 of 1975), must be construed as a reference to compensation contemplated in the provisions of section 25 (3) of the Constitution and the provisions of this Act.

(2) In the event of a conflict between this Act and any other law contemplated in subsection (1) in relation to matters dealt with in this Act, this Act prevails.

29 Repeal

The Expropriation Act, 1975 (Act 63 of 1975), is hereby repealed.

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30 Transitional arrangements and savings

(1) This Act does not apply to any expropriation initiated through delivery of a notice of expropriation prior to the date of commencement of this Act or to any consequences of any expropriation initiated prior to the date of commencement of this Act.

(2) Any proceedings for the determination of compensation in consequence of an expropriation contemplated in subsection (1) must be instituted, or if already instituted must be concluded, as if this Act had not been passed: Provided that the parties concerned may agree to the application of this Act to such expropriation or proceedings in which case the relevant provisions of this Act apply to the extent agreed upon between the parties as if it were an expropriation or proceedings for the determination of compensation in terms of this Act.

31 Short title and commencement

(1) This Act is called the Expropriation Act, 2024, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined in respect of different provisions of this Act.

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