

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

In the matter between:

CASE NO.: 2025-156411

AFRIFORUM NPC

FIRST APPLICANT

IRR LEGAL NPC

SECOND APPLICANT

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

1ST RESPONDENT

MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

2ND RESPONDENT

SPEAKER OF THE NATIONAL ASSEMBLY

3RD RESPONDENT

CHAIRPERSON OF THE NATIONAL

4TH RESPONDENT

LEGISLATURE

ECONOMIC FREEDOM FIGHTERS

6th RESPONDENT

**FILING SHEET – EFF’S ANSWERING AFFIDAVIT TO IRR LEGAL NPC’S
FOUNDING AFFIDAVIT**

TAKE NOTICE that the **ECONOMIC FREEDOM FIGHTERS (“EFF”)** hereby presents
for service and filing:

1. Answering Affidavit to IRR Legal NPC’s Founding Affidavit.

DATED AND SIGNED at on this the 5th day of JUNE 2026



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EFF'S ANSWERING AFFIDAVIT

(IRR'S CHALLENGE)



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THE DEPONENT

I the undersigned,

JULIUS SELLO MALEMA

do hereby make oath and state as follows:

1. I am the President of the Economic Freedom Fighters (“EFF”). I also serve as an EFF member of Parliament in the National Assembly.
2. I am authorised to depose to this affidavit on the EFF’s behalf.
3. The facts contained in this affidavit are within my personal knowledge and belief, are both true and correct, save for where otherwise stated or indicated by context.
4. The legal submissions I make in this affidavit are made on the strength of the legal advice obtained from the EFF’s legal representatives.

THE PARTIES

5. The intervening party is the EFF, a registered political party in accordance with the Electoral Commission Act of 1996. The EFF has representatives in all spheres of government. Its headquarters situated at Winnie Madikizela Mandela House, 119 Marshall Street, Marshall Town, Johannesburg.
6. On 12 May 2026, this Honourable Court, per Goliath DJP, granted the EFF leave to intervene in these proceedings as the sixth respondent, and granted the EFF leave to file an answering affidavit to the founding affidavit of IRR Legal NPC. The IRR NPC has been joined as the second applicant in AfriForum’s main application.


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7. This affidavit is accordingly delivered pursuant to that order, and in opposition to the challenges advanced by IRR Legal NPC (**“IRR”**).
8. The IRR, the second applicant, is a non-profit company, incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 222 Smit Street, Braamfontein, Johannesburg, Gauteng.
9. The first applicant is AfriForum. The EFF has already delivered an answering affidavit responding to AfriForum’s case.
10. The first respondent is the President of the Republic of South Africa,
11. The second respondent is the Minister of Public Works and Infrastructure.
12. The third respondent is the Speaker of the National Assembly.
13. The fourth respondent is the Chairperson of the National Legislature.
14. The above respondents are cited in their official capacities and the EFF seek no relief against them.

THE PURPOSE OF THIS AFFIDAVIT

15. This affidavit is confined to challenges advanced by the IRR in relation to sections 12(2)(e), 12(3), and 12(4) of the Expropriation Act 13 of 2024 (**“the Act”**).
16. To avoid unnecessary repetition, the EFF does not repeat every allegation contained in its answering affidavit, delivered in response to AfriForum’s founding papers.

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17. Where relevant, the EFF relies upon and incorporates by reference, the constitutional, historical and policy considerations as already set out in its answering affidavit opposing AfriForum's challenge to the Act.
18. The EFF opposes the IRR's application and contend that the impugned provisions are consistent with the Constitution and is capable of a coherent interpretation once it is properly understood. The impugned provisions are therefore not irrational, nor are they vague.

SECTION 12(2) OF THE EXPROPRIATION ACT

19. Before dealing with the specific challenges advanced by IRR against sections 12(2)(d) and 12(2)(e) of the Expropriation Act, it is necessary to consider the structure and purpose of section 12 as a whole.
20. Section 12 is the compensation provision in the Act. It gives legislative effect to section 25(3) of the Constitution, which requires compensation for expropriation 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.
21. Significantly, and must be stated at the outset, section 25(3) of the Constitution does not prescribe a market-value model of compensation. Nor does it elevate any single consideration above all others. The Constitution requires a holistic and contextual assessment directed at achieving an equitable balance between competing constitutional interests.
22. Those interests include not only the rights of property owners, but also the public interest, which the Constitution expressly states;- it includes the nation's

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commitment to land reform and measures designed to redress the consequences of past racial discrimination.

23. Section 12 of the Act mirrors that constitutional framework.

23.1. Section 12(1) identifies the factors that must be taken into account when determining compensation, including the current use of the property, its acquisition history, its market value, the extent of state investment and subsidy, and the purpose of the expropriation.

23.2. These are substantially the same considerations listed in section 25(3) of the Constitution.

23.3. Section 12(2) of the Act performs a different but important function. Rather than identifying positive considerations that must be weighed, it identifies categories of considerations that ordinarily ought not to influence the determination of compensation.

23.4. The evident purpose of section 12 (2) of the Act, and why it does not identify positive considerations, is to ensure that compensation remains focused on the constitutionally mandated enquiry into what is just and equitable and is not distorted by considerations that would artificially inflate, manipulate or otherwise skew the valuation exercise.

23.5. Section 12(2) of the Act accordingly excludes factors such as the compulsory nature of the acquisition, unlawful enhancements in value, post-notice improvements, conduct undertaken for the purpose of generating compensation, and value changes directly attributable to the expropriation scheme itself.

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23.6. But Parliament did not enact these exclusions as inflexible rules.

23.7. Section 12(2) of the Act expressly preserves a discretion to take such matters into account where special circumstances exist in which it would be just and equitable to do so. These provisions therefore combines clear valuation principles with sufficient flexibility to prevent unfair outcomes in individual cases.

23.8. This is consistent with the Constitution.

24. It is against this broader constitutional and statutory context that IRR's challenge to sections 12(2)(d) and 12(2)(e) must be assessed.

First challenge to sections 12(2)(d) and 12(2)(e)

25. The IRR contends that section 12(2)(e) is irrational, vague and unconstitutional because it allegedly contradicts section 12(2)(d).

25.1. According to IRR, section 12(2)(e) provides that "anything done with the object of obtaining compensation therefor" must ordinarily be disregarded, whereas the proviso to section 12(2)(d) permits certain improvements to be taken into account.

25.2. IRR accordingly contends that the two provisions are internally inconsistent and leave it unclear whether compensation may be paid in respect of improvements made after notice of expropriation.

26. This challenge is founded upon a misreading of the Act.

27. When these sections are properly interpreted, it reveals that sections 12(2)(d) and 12(2)(e) regulate very different circumstances, and address different concerns.

28. Section 12(2)(d):

28.1. is directed at a specific category of conduct, namely improvements made to property after the service of a notice of expropriation, this is expressly stated in this provision.

28.2. The evident purpose of the provision is to prevent the compensation enquiry from being distorted by post-notice alterations to the property which may artificially affect the valuation process.

28.3. At the same time, Parliament recognised that a blanket exclusion of all post-notice improvements could operate unfairly in particular circumstances.

28.4. The provision therefore expressly preserves consideration of improvements that were either agreed to in advance by the expropriating authority or undertaken pursuant to obligations entered into before the date of expropriation.

29. Section 12(2)(e) serves a different purpose.

29.1. It is not confined to improvements, nor is it limited to conduct occurring after the service of a notice of expropriation. It is directed at conduct undertaken with a particular objective, namely conduct undertaken for the purpose of obtaining compensation.

- 29.2. The focus of this provision is therefore not the timing of the conduct, but rather the purpose of the conduct, hence the operative words: “anything done with the object of obtaining compensation therefor”.
30. Put differently, section 12(2)(d) is a time linked provision that is concerned with post-notice improvements, whereas section 12(2)(e) is a purpose-linked provision that is concerned with conduct.
31. This conduct could be interpreted to include abusive conduct, such as conduct that is designed to manufacture or inflate compensation claims. These two provisions therefore operate differently and addresses different types of conduct.
32. Once this distinction is appreciated, the alleged contradiction disappears. There is also consistency in what these provisions seek to achieve.
33. An improvement undertaken after notice merely because the owner wishes to increase the compensation payable would ordinarily fall foul of both provisions. Such an improvement may be excluded under section 12(2)(d) because it constitutes a post-notice improvement and may equally be excluded under section 12(2)(e) because it was undertaken with the object of obtaining compensation.
34. There is no inconsistency in that result. The provisions simply reinforce one another in preventing compensation from being inflated through opportunistic conduct.
35. Conversely, and for example, an improvement undertaken pursuant to a pre-existing contractual obligation, for safety reasons, to comply with legal

requirements, or pursuant to prior approval by the expropriating authority, may qualify for consideration under section 12(2)(d).

36. In such circumstances, the purpose of the improvement is not the manufacture of a compensation claim and therefore, section 12(2)(e) is therefore not engaged at all.
37. The IRR's argument incorrectly assumes that every improvement which may ultimately increase compensation is necessarily undertaken with the object of obtaining compensation. That assumption is unsustainable.
38. Property owners frequently undertake improvements for reasons wholly unrelated to compensation, including compliance with contractual obligations, regulatory requirements, maintenance obligations, safety considerations and the ordinary use and enjoyment of property.
39. The Constitution itself does not require that every improvement made by an owner must automatically be reflected in compensation. Section 25(3) requires compensation that is "just and equitable", reflecting an equitable balance between the public interest and the interests of those affected.
40. Parliament was therefore entitled to identify categories of conduct which ordinarily ought not to influence the compensation enquiry where such conduct would distort that constitutional balance.
41. Once read in the context of section 25 of the Constitution, sections 12(2)(d) and 12(2)(e) perform precisely that function.

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- 41.1. These provisions seek to ensure that compensation reflects a constitutional value rather than value that is artificially created through opportunistic or compensation-driven conduct.
- 41.2. That objective is consistent with section 25(3) of the Constitution and its requirement that compensation be just and equitable and reflective of an equitable balance between private and public interests.
42. It must then follow that there is a rational connection between the provisions and their purpose is self-evident. Parliament sought to prevent artificial inflation of compensation, preserve public resources, and ensure that compensation remains directed at achieving the equitable balance contemplated in section 25(3) of the Constitution. The means chosen are logically connected to those objectives.
43. This challenge based on irrationality and illegality must therefore fail.

SECTION 12(3) OF THE EXPROPRIATION ACT

44. Before addressing the individual challenges advanced by IRR in relation to section 12(3) of the Act, it is necessary to identify the constitutional premise upon which those challenges are founded.
45. The EFF has already addressed in its answering affidavit delivered in response to AfriForum's founding papers, the constitutional validity of section 12(3) of the Act, the constitutional meaning of compensation under section 25(3) of the Constitution, the relationship between compensation and land reform, and the constitutional permissibility of nil-compensation in appropriate circumstances. To

avoid unnecessary repetition, those submissions are incorporated herein by reference.

46. Nevertheless, because the IRR advances certain distinct arguments and adopts a particular conception of compensation that underpins its challenge, it is necessary to address the proper constitutional interpretation of section 12(3) of the Act before turning to the individual subsections.
47. The starting point is section 25 of the Constitution itself. Section 25 of the Constitution protects property rights. At the same time, however, it expressly recognises the constitutional imperative of transformation, redress and land reform. The section does not only protect existing property relations. It also seeks to address the profound injustices created by centuries of colonial dispossession and apartheid land laws.
48. This is apparent from the text of section 25 of the Constitution itself. Section 25(4)(a) of the Constitution provides that the public interest includes the nation's commitment to land reform and to reforms designed to bring about equitable access to all South Africa's natural resources.
49. Section 25(8) of the Constitution further provides that no provision of section 25 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.
50. The Constitution therefore rejects any interpretation of property rights that ignores the transformative and redistributive purposes expressly embedded in

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section 25. Property rights and land reform are not constitutional opposites to each other.

51. Against this background, the EFF submits that the constitutional premise underlying IRR's challenge is incorrect.
52. At paragraphs 27 to 31 of its founding affidavit, IRR contends that the purpose of compensation is to place the owner in substantially the same position he or she would have occupied had the expropriation not occurred, and that compensation exists to restore the *status quo ante* by providing an equivalent monetary substitute for the property lost. That proposition does not reflect the constitutional standard enacted by section 25 of the Constitution.
53. Section 25(3) of the Constitution does not provide that compensation must place the owner in the same financial position as before the expropriation. Nor does it constitutionalise a right to market value, replacement value, full indemnification or restoration of the *status quo ante*.
54. What section 25(3) does provide is that compensation 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.
55. The Constitution therefore takes into account public interest and the broader constitutional objectives served by the expropriation. Market value is identified as only one of several relevant considerations. It is not elevated above the other constitutional factors and it is not treated as the constitutional benchmark against which compensation must invariably be measured. We explain this in our answering affidavit filed against AfriForum's challenge.

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56. The Constitution requires consideration of the history of the acquisition and use of the property, the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and the purpose of the expropriation. Those factors would be largely irrelevant if section 25 had intended to constitutionalise a pure indemnification or market-value model of compensation.
57. Contrary to the repeated suggestion in the IRR founding affidavit, section 12(3) does not provide that compensation shall be nil in any of the listed circumstances. This subsection provides only that 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.
58. The significance of this wording cannot be overstated.
59. Every determination under section 12(3) remains subject to the constitutional requirement that compensation be just and equitable and that all relevant circumstances be considered. The listed circumstances are illustrative rather than determinative. The subsection itself makes this clear by providing that the circumstances identified are included "including but not limited to" those listed.
60. Whether compensation should ultimately be nil, nominal or substantial remains a question to be determined through the constitutional balancing exercise required by section 25(3).
61. The entire premise of IRR's challenge is therefore misplaced. Much of the challenge proceeds as though Parliament enacted a compulsory nil-compensation regime.

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62. It did not.

63. Parliament enacted a contextual, and constitutionally constrained framework that remains subject to judicial oversight and to the requirements of section 25 of the Constitution.

64. It is on that proper interpretation of section 12(3) that the individual challenges advanced by IRR must be assessed.

Second challenge to section 12(3)

65. The IRR's complaint under its second challenge concerns the relationship between expropriation for a public purpose and expropriation in the public interest.

66. IRR contends that section 12(3) is constitutionally invalid because it refers to land expropriated "in the public interest" but does not expressly refer to land expropriated "for a public purpose". On that basis, IRR argues that the Legislature must have accepted that nil compensation would not be just and equitable where land is expropriated for a public purpose. IRR then seeks to reason from that proposition that land expropriated in the public interest must likewise ordinarily attract positive compensation.

67. This is a misconceived argument.

68. Section 25(2) of the Constitution permits expropriation only where it is for a public purpose or in the public interest, and where it is subject to compensation determined in accordance with section 25(3). The distinction between public purpose and public interest concerns the permissible object of expropriation. It does not create two different constitutional standards of compensation.

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69. In both cases, the constitutional standard remains the same. Compensation 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.
70. Section 12(3) of the Act does not alter that position. It does not state that nil compensation may never be just and equitable in a public-purpose expropriation. Nor does it create a rule that compensation must be nil in public-interest expropriations.
71. This is rational. Section 25(4)(a) of the Constitution provides that the public interest includes the nation's commitment to land reform and reforms designed to bring about equitable access to South Africa's natural resources. Section 12(3) is directed at precisely that constitutional context.
72. Public purpose and public interest should not be treated as mutually hostile concepts. They exist within the same constitutional scheme. Public interest is the broader concept, and land reform is expressly included within it. Parliament was therefore entitled to frame section 12(3) of the Act by reference to public-interest expropriation, because the provision is concerned with land reform and related transformative purposes.
73. IRR's further contention that land expropriated for a public purpose must have value because there would otherwise be no reason to expropriate it does not assist its challenge. The constitutional question is not whether land has some economic value. The question is what compensation is just and equitable having regard to all relevant circumstances.

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74. The public purpose/public interest argument therefore does not establish vagueness, irrationality or constitutional invalidity. It rests on the mistaken assumption that section 12(3) creates a compensation rule for one category of expropriation and excludes another, which is a mistaken assumption.

Third challenge to section 12(3)(a)

75. The challenge advanced by IRR in relation to section 12(3)(a) substantially duplicates the challenge already advanced by AfriForum. To the extent that IRR repeats AfriForum's submissions regarding nil compensation, section 25(2)(b), section 36, and the constitutionality of section 12(3)(a) generally, the EFF incorporates by reference its response to AfriForum and persists therein.
76. Beyond those submissions, IRR advances two principal contentions.
- 76.1. First, it argues that the subsection may affect owners who have inherited land but lack the means to develop it.
- 76.2. Secondly, it contends that the phrase "owner's main purpose" is impermissibly vague.
77. Neither contention has merit.
78. Section 12(3)(a) of the Act does not provide that nil compensation must be paid whenever land is not being used or developed. Nor does it provide that ownership of unused land automatically disentitles an owner to compensation.
79. What this provision does is identifies a circumstance which may, having regard to all relevant circumstances, be capable of giving rise to an award of nil compensation where this would be just and equitable. The constitutional enquiry

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required by section 25(3) remains intact and must still be undertaken in every case.

80. The case advanced by IRR of an owner who inherits land but lacks the resources to develop it illustrates precisely why the challenge fails. The owner's means, circumstances, intentions, ability to develop the property, and all other relevant factors would remain part of the section 25(3) enquiry. The subsection does not require that such an owner receive nil compensation.
81. The challenge is accordingly directed not at the provision that Parliament enacted, but at a hypothetical interpretation that ignores the express requirement that all relevant circumstances be considered. Nor is it irrational for Parliament to recognise a distinction between land that is being retained for productive, residential, agricultural, developmental or other legitimate purposes and land that is being retained primarily for speculative appreciation while remaining unused.
82. Section 25(3) of the Constitution itself requires consideration of the current use of the property when determining compensation. Parliament was therefore entitled to recognise that the use or non-use of land may be relevant in determining what compensation is just and equitable.
83. The contention that the phrase "owner's main purpose" is vague is likewise unsustainable. Courts are routinely called upon to determine questions of purpose, intention and dominant purpose etc. Such enquiries are made on the basis of objective evidence and surrounding circumstances. The fact that the enquiry may be fact-sensitive does not render it vague.

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84. Whether an owner's main purpose is to develop land, generate income from it, occupy it, preserve it for a particular use, or simply benefit from appreciation in its market value is a question capable of determination on ordinary evidential principles.
85. This provision is therefore neither irrational nor impermissibly vague.

Fourth challenge to section 12(3)(b)

86. The IRR challenges section 12(3)(b) of the Act on the basis that it allegedly penalises organs of state for failing to utilise land for their core functions and irrationally exposes them to nil compensation despite the absence of misconduct or fault.
87. To the extent that this challenge repeats AfriForum's broader attack on the constitutional validity of nil compensation, the EFF incorporates by reference its response to AfriForum and persists therein.
88. The challenge is premised upon a mischaracterisation of the provision. Section 12(3)(b) of the Act does not attribute fault to an organ of state. Nor does it impose a penalty upon an organ of state for failing to use land in a particular manner.
89. The provision merely identifies a circumstance which Parliament regarded as potentially relevant to the constitutional enquiry required by section 25(3) of the Constitution, namely where land is owned by an organ of state, is not being used for its core functions, and is not reasonably likely to be required for its future activities in that regard.



90. Whether compensation should ultimately be nil, nominal or substantial remains dependent upon the determination of what is just and equitable having regard to all relevant circumstances.
91. The absence of fault does not render the subsection irrational. Section 25(3) of the Constitution does not require that compensation factors be fault-based. The Constitution requires consideration of matters such as current use, acquisition history, state investment and the purpose of expropriation. These considerations may be relevant irrespective of whether any person has acted improperly.
92. Parliament was entitled to recognise that different considerations may arise where land is already held by an organ of state, is not being used for the public functions for which it is held, and is not reasonably likely to be required for those functions in the future.
93. In such circumstances, the land remains a public asset held using public resources. It is neither irrational nor constitutionally impermissible for the provision to provide that a court may regard those circumstances as potentially relevant when determining whether nil compensation would be just and equitable.
94. This challenge accordingly fails.

Fifth challenge to section 12(3)(c)

95. IRR adopts AfriForum's challenge to section 12(3)(c) and contends that the subsection is vague, irrational and opens the door to arbitrary expropriation because it contemplates circumstances where an owner has abandoned land by failing to exercise control over it despite being reasonably capable of doing so.

96. To the extent that IRR repeats AfriForum's broader challenge to nil compensation and the constitutional validity of section 12(3), the EFF incorporates by reference its response to AfriForum and persists therein.
97. The challenge directed at this provision is without merit. Section 12(3)(c) of the Act does not provide that compensation shall be nil whenever land is alleged to have been abandoned. It provides only that nil compensation may be just and equitable where an owner has abandoned the land by failing to exercise control over it despite being reasonably capable of doing so.
98. The contention that this provision is vague is unsustainable. Abandonment is a familiar concept in our law. Courts have long been required to determine whether rights, interests, possessions and property have been abandoned. Parliament therefore employed a recognised concept in our legal system.
99. Moreover, this provision narrows the enquiry by identifying specific factual considerations, namely whether the owner has failed to exercise control over the land and whether the owner was reasonably capable of doing so. The fact that the enquiry may be fact-sensitive does not render the subsection vague. This challenge is equally incapable of establishing irrationality.
100. There is a clear rational connection between that objective and the means employed. Parliament was entitled to regard abandonment, non-use and the failure to exercise control over land despite being capable of doing so as circumstances potentially relevant to the determination of just and equitable compensation.

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101. Furthermore, the contention that the subsection opens the door to arbitrary expropriation is misplaced. Section 12(3)(c) of the Act does not confer a power of expropriation. It concerns compensation. The power to expropriate remains governed by section 25(2) of the Constitution and the other provisions of the Act, all of which remain subject to constitutional review and judicial oversight.

102. This challenge accordingly fails.

Sixth challenge to section 12(3)(d)

103. The IRR challenges section 12(3)(d) of the Act on the basis that it allegedly limits the right to compensation in order to punish owners who have failed to improve the value of land beyond the value of state investment or subsidy. IRR further contends that market value is inherently volatile and that the subsection may affect beneficiaries of land reform programmes.

104. To the extent that this challenge repeats AfriForum's broader challenge to nil compensation and section 12(3), the EFF incorporates by reference its response to AfriForum and persists therein.

105. This challenge is founded upon a mischaracterisation of the subsection.

106. Section 12(3)(d) does not provide that compensation shall be nil whenever the market value of land is equal to or less than the present value of direct state investment or subsidy in its acquisition and beneficial capital improvement. Again, this provision provides only that such circumstance may render nil compensation just and equitable after consideration of all relevant circumstances, in accordance with the Constitution.

107. The challenge is further difficult to reconcile with the text of the Constitution itself.

108. Section 25(3)(d) of the Constitution expressly requires regard to be had to the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property when determining compensation.
109. Parliament was therefore not introducing a novel consideration into the compensation enquiry. This is from the Constitution itself. The contention that the subsection irrationally punishes owners who have not increased the value of land beyond the value of state investment misconceives the purpose of the provision.
110. Section 12(3)(d) of the Act recognises that where the present value of direct state investment or subsidy equals or exceeds the market value of the land, that circumstance may be relevant when determining what compensation is just and equitable.
111. The argument that market value may fluctuate for a variety of reasons likewise does not establish irrationality. Market value is inherently variable and will differ according to economic conditions, demand, location, development potential and numerous other factors. The Constitution nevertheless expressly identifies market value as a relevant consideration while declining to make it determinative.
112. Section 25(3) of the Constitution adopts a multi-factor balancing enquiry precisely because market value alone does not necessarily yield a just and equitable outcome. The volatility of market value therefore provides no basis for excluding consideration of state investment or subsidy.
113. Additionally, IRR's concern that beneficiaries of land reform programmes may fall within the ambit of the subsection similarly fails to establish constitutional invalidity. As mentioned above, the Constitution itself expressly directs courts to

consider state investment and subsidy. Parliament was entitled to recognise that in certain circumstances involving substantial public investment, that consideration may carry significant weight in the determination of just and equitable compensation.

114. Whether nil compensation would ultimately be appropriate in any particular case remains a matter for judicial determination having regard to all relevant circumstances.

115. This challenge accordingly fails.

Seventh challenge to section 12(3)(4)

116. IRR supports AfriForum's challenge to section 12(4) and contends that the subsection offends the constitutional requirement of just and equitable compensation.

117. To the extent that IRR repeats the challenge advanced by AfriForum, the EFF incorporates by reference its response to AfriForum and persists therein.

118. In any event, the challenge cannot succeed.

118.1. Section 12(4) of the Act does not establish a separate compensation regime.

118.2. The provision merely provides that, for purposes of section 25(3)(e) of the Constitution, regard may be had to compensation previously paid in respect of rights in land where land is expropriated for purposes of land reform and in order to redress the results of past racially discriminatory laws or practices.

118.3. This provision is therefore firmly rooted in the constitutional text. Section 25(3)(e) of the Constitution requires consideration of the purpose of the expropriation. Land reform and redress are constitutional imperatives repeatedly recognised throughout section 25 itself.

118.4. This provision provides that regard may be had to prior compensation paid in respect of rights in land, and does not require the court to reduce compensation or disregard any relevant circumstance.

118.5. This provision accordingly preserves judicial discretion and leaves the ultimate determination to the constitutionally mandated assessment of what compensation is just and equitable having regard to all relevant circumstances.

119. Consequently, this challenge must fail.

THE SECTION 36 ARGUMENT

120. IRR further contends that the impugned provisions cannot be justified under section 36 of the Constitution. That argument does not arise.

121. As demonstrated above, sections 12(2)(d), 12(2)(e), 12(3) and 12(4) of the Act are constitutionally compliant provisions that give expression to the compensation framework established by section 25 of the Constitution.

122. The provisions do not displace the requirement that compensation be just and equitable. Nor do they authorise arbitrary expropriation, mandatory nil compensation, or any of the consequences attributed to them by IRR.

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123. In those circumstances, no infringement of a constitutional right has been established and the limitations enquiry contemplated by section 36 does not arise.

124. In any event, and only if this Honourable Court were to conclude that a limitation has been established, the provisions serve important constitutional objectives, including land reform, equitable access to natural resources and the redress of past racial discrimination, all of which are expressly recognised and protected by section 25 itself.

125. Any limitation occasioned by the provisions would accordingly be reasonable and justifiable in an open and democratic society based on constitutional rights such as human dignity and equality.

CONDONATION

126. The order granted per Goliath DJP on 12 May 2026, directed the EFF to file its answering affidavit by 02 June 2026. This affidavit is filed on 5 June 2026, and is therefore, 3 days late.

127. The EFF respectfully seeks condonation for the late filing of this affidavit. They delay, being 3 days, is neither excessive nor is it unreasonable. Importantly, no prejudice is occasioned to the IRR. It is in the interest of justice to allow the late filing of this affidavit, for a full and proper ventilation of the merits in this challenge.

CONCLUSION

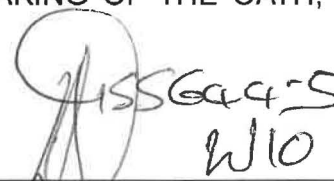
WHEREFORE the EFF prays for this application to be dismissed together with costs, including costs of two counsel.

Handwritten signature and initials, likely of the legal representative of the EFF.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT Sandton ON
THIS 05 DAY OF JUNE 2026, THE DEPONENT HAVING
ACKNOWLEDGED IN MY PRESENCE THAT HE KNOWS AND UNDERSTANDS
THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT
GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE
R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING
BEEN COMPLIED WITH.

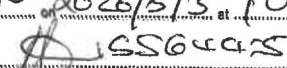

W10
COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

W10

LEICALALACA NICKY
2 Summit road
Morningside



I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to/affirmed before me and deponent's signature/mark/thumbprint was placed thereon in my presence.	
Sandton 2026/5/3 10 00	
	
(Signature) Commissioner of Oaths	
LEICALALACA NICKY	
Full First names and Surname in Block letters	
2 Summit road	
Business Address (Street Address)	
Morningside	
W10	
Rank	
SA POLICE SERVICES	