



**POSITION PAPER  
OF THE  
SOUTH AFRICAN HUMAN RIGHTS COMMISSION  
REGARDING**

**THE EXPROPRIATION ACT (NO. 13 of 2024)**  
AND ITS LIMITS IN FULFILLING SECTION 25(5) OF THE CONSTITUTION

**11 June 2025**

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**1. Introduction**

- 1.1 The South African Human Rights Commission (Commission / SAHRC) issues this position paper in response to the continued portrayal of the Expropriation Act (No. 13 of 2024) (hereafter “Expropriation Act”), as a key component of South Africa’s land reform agenda. On the contrary, the Expropriation Act merely delineates the procedures and conditions under which the State may acquire privately owned land. Redistribution of land is principally governed by Section 25(5) of the Constitution of the Republic of South Africa, 1996 (hereafter “Constitution”).
- 1.2 The Commission emphasises the importance of distinguishing between legal instruments that enable administrative procedures and those that substantively achieve constitutional obligations. The current version of the Expropriation Act is instrumental in defining how expropriation will occur, it is not a law designed to ensure substantive redistribution of land.
- 1.3 The Commission supports all legal and policy reforms that support and advance justice and redress in land access. This includes championing changes to existing laws and policies to address historical injustices, land dispossession, and inequality, particularly among marginalised communities.
- 1.4 The Commission recognises that land is a fundamental resource tied to economic empowerment, cultural identity, and social well-being. Access to land is crucial for individuals and communities to secure livelihoods, build wealth, and sustain their

families. Beyond its economic value, land carries profound cultural heritage significance, serving as a foundation for traditions, and social cohesion.

## **2. Constitutional Framework**

- 2.1 Section 25 of the Constitution outlines a wide array of mechanisms to promote, protect, and prevent deprivations of property rights. It does so while striking a balance between protecting existing rights and undoing South Africa's legacy of colonial conquest and historical patterns of structural land injustices.
- 2.2 For example, Section 25(2)-(4) presents a procedural framework for the expropriation of land, which is founded on a negotiated "willing buyer, willing seller" principle, and includes the conditions for compensation.
- 2.3 This is distinct from Section 25(5), which places a positive duty on 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."
- 2.4 Notably, Section 25 does not provide a framework for the redistribution of land.
- 2.5 Section 25 also contains a provision that prohibits any impediment that seeks to prevent 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 accords with the provisions of section 36(1) of the Constitution.
- 2.6 Section 25(8) of the Constitution explicitly prohibits any provision within Section 25 from impeding the State's authority to enact legislative and other measures aimed at achieving land, water, and related reforms. These reforms are intended to redress the consequences of past racial discrimination. Any deviation from the provisions of Section 25 must align with the criteria set forth in Section 36(1) of the Constitution, which permits limitations on rights if such limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom.

## **3. The Purpose of the Expropriation Act**

- 3.1 The Expropriation Act seeks to repeal the Expropriation Act No. 63 of 1975. It provides the procedural framework that gives effect to, and regulates the expropriation of land in the public interest and for public purposes.
- 3.2 The Expropriation Act also identifies instances where the provision of nil compensation may be just and equitable for expropriation in the public interest. It builds layers of safeguards for protecting property rights, through a detailed procedural mechanism including:
- a) Notice and consultation requirements;
  - b) Negotiations and determination of compensation;
  - c) Conditions / circumstances for Nil Compensation; and
  - d) Procedures for disputes.

#### **4. Limitations of the Expropriation Act**

- 4.1 The Expropriation Act has largely been presented as a mechanism for equitable land redistribution in both national and global discourse. However, the legislation is highly procedural, and neither presents a compensation framework that is historically sensitive, nor conditions for equitable redistribution of land.
- 4.2 Access to land is considered to be essential to accessing socio-economic rights related to food, adequate housing, education, environment, and healthcare. The Constitutional Court has previously held that the State has positive obligations regarding socio-economic rights<sup>1</sup>. As such, the State is obliged to devise and enact reasonable measures within its available resources to achieve the progressive realisation of land rights. The Expropriation Act, which contains minimal deviations from its 1975 iteration, does not meet this obligation.

#### **5. Implications for Legislative Gaps**

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<sup>1</sup> Government of the Republic of South Africa v Grootboom (2000), Minister of Health v Treatment Action Campaign (TAC) (2002), Khosa v Minister of Social Development (2004)

- 5.1 The State's continued failure to enact specific legislation to give effect to land reform in terms of Section 25(5) of the Constitution enables a prevailing context of policy incoherence regarding land rights. Section 25(5) mandates the State to take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis. It is nearly 30 years since the enactment of the Constitution and no legislative measures have been taken by the State to give effect to Section 25(5) of the Constitution.
- 5.2 This legislative void has hindered the establishment of a coherent and unified approach to land redistribution. The absence of clear legislative direction has led to the implementation of land redistribution initiatives in a disjointed and inconsistent manner, often lacking coordination and strategic focus. As a result, these initiatives have been ineffective in achieving the intended goal of equitable land access and have been prone to inefficiencies and mismanagement.
- 5.3 A typical example of mismanaged of the land redistribution programme is the case of *Rakgase and Another v Minister of Rural Development and Land Reform and Another*,<sup>2</sup> MR Rakgase ("the Applicant") is currently 78 years old. He has been farming on certain portions of the farm Nooitgedact in the Limpopo Province ("the farm") since 1991. He had initially leased the farm from the (then) Bophutatswana homeland government and subsequently from the National Government who now owns the farm. In 2003 the Provincial Grant Committee of the National Department of Agriculture approved his application to purchase the farm through the then operative Land Redistribution for Agricultural Development Programme ("LRAD"). Seven years later, the delegate of the relevant minister decided not to approve the sale of the farm to the Applicant, but rather to lease it to him for a period of 30 years, ostensibly to see if he qualifies to purchase the farm. The State's decision to lease the farm to Mr Rakgase for another period of 30 years was subsequently reviewed and set aside by the Pretoria High Court.
- 5.4 The Special Investigating Unit (SIU) 2018 Final Report on *the application for and award of grants, the transfer of land or the payments of funds to beneficiaries and the administration thereof* by the Department of Rural Development and Land Reform, also painted a very sorry state of affairs re: land redistribution programme.<sup>3</sup> The SIU

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<sup>2</sup> 2020 (1) SA 605 (GP)

<sup>3</sup> SIU 2018 Final Report to the President of the Republic of South Africa His Excellency President MC Ramaphosa, in respect of the National Department of Rural Development and Land Reform on the application

investigation revealed: various instances of misconduct on the part of officials; criminal conduct on the part of officials, applicants and/or their representatives and other role players; fruitless and wasteful expenses; and weaknesses in systems, control and mechanisms in respect of the Department's Land Reform Programme.

- 5.5 The SAHRC also highlighted the legislative void under Section 25(5) of the Constitution and the consequences of thereof. To imply that all these land redistribution challenges will be adequately addressed on the back of the Expropriation Act is unacceptable.
- 5.6 Allowing these continued references to the Expropriation Act as a mechanism for land redistribution to continue undisputed, may allow the State to claim compliance with Section 25(5), while in reality failing to address spatial and economic inequalities sustained by landlessness. There is a clear distinction between land acquisition and land redistribution, the Expropriation Act deals with the former and not the latter.

## **6. Conclusion**

- 6.1. The current version of the Expropriation Act, inadequate as it is, only regulates State's acquisition of privately owned land, it does not deal with how the land is to be redistributed. Accordingly, land redistribution remains unlegislated in South Africa 30 years since the advent of democracy.
- 6.2. The Commission remains committed to playing a role in ensuring that legislation that will inform land redistribution in South Africa is finally enacted.

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