

**“You do not stand alone against confiscation.”**

# **An International Open Letter to the People of South Africa**

We, the undersigned, declare our solidarity with the people of South Africa, whose property rights are now threatened by the South African state. The Free Market Foundation (FMF), Property Rights Alliance (PRA), and its partners unequivocally oppose the amendment of the South African Constitution to allow for expropriation of property without compensation (EWC), or more aptly, confiscation.

When South Africa embarked upon its internationally praised constitutional democracy in 1994, the world rejoiced. Since colonial times, the property rights and economic freedoms of most South Africans were frequently restricted or eliminated for reasons that no functioning democracy would countenance. This practice had the effect of creating two economic classes, and two economies: A first-world, advanced market economy, and a third-world, informal and precarious economy. Racially motivated inhibitions on economic freedom and property rights gave rise to one of the most unequal societies in the world. The earnest process of repair began when South Africa joined the community of nations dedicated to constitutional protection of property rights during the 1990s. The end of the apartheid system coincided with recognizing the property rights of all South Africans despite their race or colour. Property rights guarantee freedom for all and are the backbone of any democracy.

Section 25 is one of the most important features of the South African Constitution and is unique among the constitutional property clauses of the world. It not only protects the assets and incentives that make economic prosperity possible, but also obliges the government to expand property rights to all those who were previously denied those rights. Since 1996, the South African state has been charged with the duty to facilitate security of tenure; to ensure the restoration of the dispossessed; and the enhancement of the prospects of the poor by the encouragement of secure title. Government has made lamentably slow progress; in place of secure title, it has created insecure tenancies.

Where the proper application of section 25 could, and should, have fulfilled a positive empowering role, the government has, instead, set about a legislative process designed to emasculate that provision. As a first step, the government proposes a device whereby “nil” compensation may be determined in open-ended circumstances where property is expropriated by a government agency. Property in this context includes any fixed property, but a precedent will be set that could in future be extended to intangible assets as well. Government is therefore proposing a policy of confiscation – legalized theft – of private property.

Despite a generally rising score in the PRA's *International Property Rights Index*, South Africa's score in the criterion "Protection of Physical Property" has declined markedly in the three years since government committed itself to a policy of confiscation. This decline will continue and will negatively affect other important financial and governance metrics: Investment potential, the perception of corruption, human development, economic freedom, the rule of law, and others.

It was recently announced that 37 farmers in the Mpumalanga province are set to be evicted from their land which they have occupied, some for several years, as tenants of the state. This is a harbinger of the future of all South Africans, if the government should have its way, for the ultimate intention is that all land, and the improvements thereon, should vest in the state.

The farmers refused to pay "administration fees" of R250,000 (US\$17,100) each, and were promptly served with notices of summary eviction.

The government programme seeks to appeal to populism to mask the failure of the government to release state land for personal and commercial use. Despite this rhetoric of populism, only a small, elite minority of political partisans support the confiscation policy. Should a referendum be held on whether or not government should be allowed to confiscate property without being required to pay for it, a sound majority would reject it out of hand. The governing party has, however, already ruled out holding a referendum on the constitutional amendment, which is a sure sign of its lack of confidence in popular support for EWC.

EWC will exponentially increase the power of the state, make a mockery of the idea that each citizen is equal in the eyes of the law, and entrench the already endemic corruption that characterizes the civil service.

We stand with the people of South Africa in this uncertain and trying time when constitutional legitimacy and the rule of law is threatened. Whether or not the government succeeds in its plans to amend the South African Constitution, our common effort to secure universal recognition and respect for property rights will not abate.



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