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Washington, DC September 25, 2018

**Mission of the Republic of South Africa**  
**His Excellency Mr. Mninwa Johannes Mahlangu**  
**Ambassador to the United States of America**  
3051 Massachusetts Avenue NW  
Washington, DC 20008

**THE PROPERTY RIGHTS ALLIANCE**  
**CAUTIONS SOUTH AFRICA AGAINST EXPROPRIATION WITHOUT COMPENSATION**

His Excellency Mr. Mahlangu,

We appreciate your outstanding efforts in strengthening the relationship between South Africa and the United States. Property Rights Alliance (PRA) is an international advocacy organization dedicated to the protections and promotion of property rights around the world. This year PRA launched its annual flagship publication the International Property Rights Index (IPRI) in Johannesburg, South Africa. In 2018, after President Cyril Ramaphosa announced his intention to pursue expropriation without compensation land reform (EWC), South Africa's score dropped more than any other country in the world.

The Property Rights Alliance notes with caution the decision of the Parliament of South Africa in February 2018 to adopt a motion in consideration of amending the Constitution of South Africa, 1996, to allow for expropriation of private property without payment of compensation. The Constitution currently requires that government provide just and equitable compensation when it expropriates private property, which is the universal practice in open and democratic societies around the world.

**The context**

South Africa's apartheid history is one a denial of property rights to most people, especially black people. Without a secure right to property, black South Africans were forced to live with precarious tenure security, often on the periphery of so-called "white" cities and towns. Here, they found themselves as tenants on property owned by the government. They could be summarily evicted and moved to some other area when government deemed it appropriate. Those who lived in informal settlements had even less peace of mind, as the government could at any time arrive with bulldozers and forcefully evict whole families from their homes.

The post-apartheid Constitution put a stop to this by recognizing the private property rights of all South Africans regardless of their race. The Constitution and legislation enacted in the 1990s, like the Upgrading of Land Tenure Rights Act, obliges the government to recognize ownership and go

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about strengthening the property rights of those who under apartheid had tenure security denied to them. A narrative that recently emerged, however, is that property rights, and particularly the right to just and equitable compensation for property expropriated for land reform purposes, stands in the way of bringing about socio-economic prosperity. This false belief is informed partly by a misunderstanding of property rights, and partly by the government's failure to strengthen property rights in the years since the Constitution was enacted. Unfortunately, this false belief has led to the government's decision to significantly weaken property rights by applying the principle of expropriation without compensation, a notion the ruling party committed itself to again on 31 July 2018.

### **Protecting property rights is imperative**

The Property Rights Alliance, an international network of more than 100 organizations dedicated to the protection of physical and intellectual property, seeks to caution South African policy-makers against removing protections for these civil rights from its constitution. Other nations that have tried this, including Zimbabwe and more recently Venezuela, have encountered only destitution and skills emigration as a result.

Prof. Sary Levy-Carciente, Venezuelan economist and, author of PRA's 2018 International Property Rights Index, cautioned at the launch of the Index that "There is nothing more important than freedom. When you lose one of your civil rights, you lose all of them. Please keep yours safe." Amending the constitution to take away an established right (to compensation for expropriated property) will potentially have bad consequences down the line for constitutional democracy. Future governments may abuse this new power to undermine political opponents by expropriating their property arbitrarily or use the power to expropriate property like pensions in order to fund government programs.

The government claims it needs to remove the requirement to pay compensation in order to fast-track substantive land reform; namely, to extend property rights to black people who were previously denied it. It says this will allow it to take property from illegitimate white owners and give it to rightful black owners. This is faulty thinking. The section 25 right to property and its associated right to compensation applies to all South Africans, not only white South Africans, meaning that taking away the right to compensation will affect everyone equally.

Furthermore, an amendment to the Constitution of this nature will also not only apply to land, which the rhetoric implies that it would. In fact, it will apply to all types of property: physical and intellectual. Pension funds, trademarks, patents, bank accounts, houses, vehicles, heirlooms, etc. will all be subject to government takings without compensation if the amendment is passed into law. Without secure property rights, which includes the right to just and equitable compensation, investment and economic growth will grind to a halt. This is because individuals, communities, and businesses no longer trust that the time, effort, and money they put into building businesses and developing properties will be secure from government taking.

### **The alternatives**

There are better ways to extend and strengthen property rights than what the government proposes. Millions of South Africans continue to live in properties owned by local governments. This is a phenomenon that has been left over from apartheid legislation. The current government should

recognize these South Africans as the true and unambiguous owners of their property and give them real title deeds to that property, in terms of the Upgrading of Land Tenure Rights Act of 1991. Vast swathes of South African land are owned by the government and is underutilized, or not used at all. The government can easily transfer much of this land to deserving poor families and communities. Government-subsidized housing does not come with unambiguous ownership. Instead, beneficiaries' title deeds include pre-emptive clauses that deny them many entitlements of ownership, such as the ability to sublet or to sell their property for a period of eight years. This is not true property rights. These clauses, which were enabled by the Housing Amendment Act of 2001, should be removed.

### **Conclusion**

The Constitution of South Africa, which is internationally regarded as one of the best in the world, is a representation of the good decisions South Africans made coming out of apartheid: to protect human dignity, equality, and fundamental rights and freedoms. Implementing a policy of expropriation without compensation will undo much of this and reduce the Constitution to a shadow of its former self.

While South Africa has after the fall of apartheid had the strongest property rights regime in Africa, according to the IPRI this year it lost the first place to Rwanda after talks of expropriation without compensation began. Globally, South Africa ranks 37<sup>th</sup> out of 125 measured countries, which is a good statistical score. However, this year South Africa went down 0.65 points – more than any other country in the world. SA did not gain points in any measured components, and indeed fell on each.

We regard this to be a direct result of government's intention to bring about expropriation without compensation. South Africa set a bright example for the international community in the 1990s when it showed the world that intense civil strife and tyranny can be brought to an end in a nonviolent revolution that blossoms into a functioning constitutional democracy. Many have learned from South Africa's experience. But now is a time for South Africa to learn from the experience of countries, like the aforementioned Zimbabwe and Venezuela, and not make the same mistakes they did.

Sincerely,  
  
Lorenzo Montanari

Executive Director, Property Rights Alliance  
Editor of the International Property Rights Index  
<https://www.internationalpropertyrightsindex.org/>