



PARLIAMENT OF THE  
REPUBLIC OF SOUTH  
AFRICA

*Dr. Annelie Lotriet MP*



ONE NATION. ONE FUTURE

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Ms. M.B Jeria  
Office of the High Commissioner  
United Nations Human Rights Council  
OHCHR- Palais Wilson  
United Nations Office at Geneva  
CH-1211 Geneva 10, Switzerland

25/06/2021

Ref: **Complaint against planned individual property rights violations in South Africa**

The Democratic Alliance (DA), a political party represented in the South African Parliament, is writing to make a representation before the United Nations Human Rights Council (UNHRC) on the ongoing attempt by the South African government, under the African National Congress (ANC), to amend the country's laws and pass an amendment to the Constitution that would deprive South Africans of their property rights through expropriation of land without compensation.

It is our considered view that should this amendment be passed, it will not only infringe on the rights of all South Africans to own land but would also be at variance with Article 17 of the Universal Declaration of Human Rights (UDHR) which protects the rights of people to own property.

**Our petition before the UNHRC is to request that the Council considers adopting a resolution calling on the South African government to honour its obligations under international law and to caution it against pursuing any process that undermines the property rights of South Africans.**

We have used our presence in Parliament to raise alarm on the negative implications of the Bill on the rule of law, the agriculture sector, Foreign Direct Investment and the long term sustainability of the economy. Recently we wrote to the South African national Cabinet (the Executive arm of government) to ask that they publicly reject the ongoing parliamentary process to push for the expropriation of land without compensation through the 18th Constitution Amendment Bill (See Annexure B). They did not respond.

**18<sup>th</sup> Constitution Amendment Bill to amend Section 25 of the Constitution**

The 18<sup>th</sup> Constitution Amendment Bill (See Annexure C) is a piece of legislation that is currently before the South African Parliament. Its purpose is to amend Section 25 of the Constitution to allow the state to expropriate land without compensation.



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Its major sponsors are two political parties, the ANC and the Economic Freedom Fighters (EFF). Both parties have taken South Africa's genuine need for land reform to address skewed historical land ownership patterns, to push for a Bill that will have no bearing in addressing landlessness in South Africa.

Under this Bill, the ANC and the EFF are advocating for upending the current system of private property ownership in favour of state custodianship. This will be detrimental to the rule of law as it would mark the end of existing constitutional provisions which guarantee property rights.

South Africa's constitutional dispensation recognises the rule of law as a sacrosanct value that exists to protect fundamental human rights of all its citizens, including security of property rights.

Even more alarming is the attempt by the ANC and the EFF to try and include a clause that will exclude the judiciary from adjudicating on land expropriation cases. Besides overstepping Parliament's constitutional role as it cannot prescribe to the judiciary what it can or cannot do, this ill-advised clause is designed to simply deny South Africans their right to fair and administrative justice.

### **South Africa's needs genuine land reform**

Section 25 of the South African Constitution already provides pathways for just and equitable land reform without resorting to any amendment.

Amending section 25 of the Constitution to allow for expropriation of land without compensation, as proposed by the ANC and the EFF, does nothing to provide justice for landless South Africans.

The failure of land reform over the past 24 years has been the lack of action by government to ensure justice is served and the country's skewed land ownership patterns are addressed.

Since 1994, when South Africa transitioned from its apartheid past to a constitutional democracy:

- only 21% of 82.759 million hectares of farmland has been redistributed;
- only 10% (approximately 4,000) of all farms which have been redistributed have resulted in productive usage.

In 2017, a High Level Panel Report commissioned by the government concluded that "the need to pay compensation has not been the most serious constraint on land reform in South Africa to date." It identified evidence of corruption by officials, diversion of the land reform budget to the political elite, a lack of political will, and a lack of training and capacity for



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resettled farmers as more serious stumbling blocks. These are all factors that the government has control over without need for recourse to constitutional amendments.

### **How the issue falls within the mandate of the UNHRC**

Article 17 of the UDHR acknowledges the right to property as a moral right. The Article states that:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Adoption of the UDHR by the United Nations ensured that it became the basis upon which customary international law on fundamental freedoms and human rights were formulated in the UN Charter. South Africa is a signatory to the UN Charter and is therefore bound by its provisions.

The 18<sup>th</sup> Constitution Amendment Bill currently before the South African Parliament is at variance with the substance of this Article as it seeks to deprive South Africans of their rights to own property through the arbitrary instrument of expropriation without compensation.

Furthermore, the socio-economic rights of all South Africans are at grave risk should this Bill be accented to. The value of South Africa's financial sector has dropped by a third since President Ramaphosa's first announcement in 2018 to introduce the Section 25 amendment to allow for expropriation without compensation. South Africa is now the only sizable emerging market country with net outflows of foreign direct investment. Foreign direct investment fell 46% in SA in 2020 compared with only 11% for Sub-Saharan Africa as a whole.

### **Conclusion**

Amending section 25 of the Constitution to allow for expropriation of land without compensation will not address the systemic challenges currently facing the land reform process in South Africa. What is needed is a pragmatic and rational approach that will operate within the confines of current constitutional provisions on land reform.

The 18<sup>th</sup> Constitution Amendment Bill is at variance with the UDHR's Article 17 as it seeks to deprive South Africans of their rights to own property through the arbitrary instrument of expropriation without compensation.

**Our petition before the UNHRC is to request that the Council considers adopting a resolution calling on the South African government to honour its obligations under**



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**international law and to caution it against pursuing any process that undermines the property rights of South Africans.**

Kind Regards

Annelie Lotriet MP

Chairperson of the DA Parliamentary Caucus  
Parliament of South Africa