

**Submission to the UN Forum on Human Rights, Democracy and the Rule of
Law
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by

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On behalf of AfriForum, I thank the Forum for the opportunity to make this submission.

Introduction

AfriForum is a South African civil rights organisation, established in 2005, comprising 215 128 individual members (exact figure on 21 November 2018), each making a monthly contribution. Its focus is civil rights, especially, but not exclusively the rights of the Afrikaner community in South Africa. In order to ensure the promotion of human rights, democracy and the rule of law in South Africa, AfriForum has national and local campaigns that focus on issues such as language rights, education, municipal service delivery, anti-corruption activities, safety and environmental issues, to name but a few. It has also established a private prosecuting unit, that ensures that when the state, for whatever reason, decides not to prosecute, violators of human rights are held accountable, in order that no-one may claim to be above the law. AfriForum condemns any form of racism and is working peacefully within the framework of the law to help create a society based on a culture of mutual recognition and respect, where all residents of South Africa may live in freedom, safety and prosperity.

In this submission I will focus on some essential requirements when a parliament endeavours to promote human rights, democracy and the rule of law, drawing on our experience in South Africa.

Essential requirements

- **Separation of powers**

A separation of powers is of key importance. In South Africa, the ideological and party interests of the ruling African National Congress (ANC) are so intertwined with the powers of Parliament that it is hard to know where the one ends and the other begins.

In general, the more these lines become blurred, the higher the chances that human rights violations and other excesses will occur.

An example in this regard is the current investigation by the Zondo Commission into allegations of South African state capture and corruption, involving several South African Members of Parliament and former Members, including the former State President, Mr Jacob Zuma.

- **Constitutional bodies as watchdogs**

The South African Constitution provides for institutions to ensure that human rights are protected and to guard democracy in the country. These include the following organisations:

- The Public Protector;
- The South African Human Rights Commission;
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- The Commission for Gender Equality;
- The Auditor-General;
- The Independent Electoral Commission; and
- The Independent Communications Authority of South Africa.

Unfortunately, as a result of factors such as cadre deployment by the ruling party, insufficient funding, a lack of enforcement powers, unskilled workers and a lack of political will to protect the independence of these organisations, some are severely dysfunctional. The same applies to other constitutional bodies such as the Pan-South African Language Board, which is supposed to safeguard language rights in South Africa, but is paralysed due to administrative issues and allegations of corruption.

The creation of such bodies are one way in which a parliament's actions and the promotion of human rights, democracy and the rule of law can be promoted, but then pitfalls of this nature should be avoided and the bodies need the scope to execute their duties without fear or favour.

- **Scapegoating**

In a fairly homogenous society, parliaments would probably face less challenges when promoting human rights, democracy and the rule of law.

In the case of a very heterogenous society - culturally diverse and economically unequal, challenges multiply substantially. It provides politicians and populists with ample room for scapegoating to divert attention from their mistakes, and to garner support at the cost of vulnerable minorities, as is increasingly happening in South Africa.

- **The nature of democracy**

All parliaments should acknowledge that true democracy is not a tyranny of the majority, but a system where all citizens and residents in a country are afforded the same respect, opportunities, rights and obligations.

Matter of concern: The South African Parliament's proposed programme of expropriation without compensation

With the above issues in mind, AfriForum currently is especially concerned about the South African Government's role in a proposed programme of expropriation without compensation.

AfriForum appeals to all international bodies focussing on the promotion of human rights, democracy and the rule of law, and in particular this forum, to exert diplomatic pressure on the South African Government to respect the South African Constitution and the protection of property rights contained therein, emanating from the negotiated settlement reached in South Africa in the early 1990s. During the 1990s, such bodies and foreign powers played a role in encouraging the various South African parties to reach a settlement, and for this reason we feel free to request the international community to play a role in ensuring that the settlement that was negotiated at that time, will not be violated now. Amending the South African Constitution in order to allow for the expropriation of property without compensation would amount to a violation of the negotiated settlement of the 1990s, to the detriment of the human rights of all South Africans.

AfriForum is not requesting the exertion of pressure by means of sanctions, as this would cause ordinary people in South Africa to suffer. Instead, we appeal to the international community by means of this forum to warn the South African Government of the negative consequences of a policy of expropriation without compensation, so as to ensure that the governing party will dispense with its plans to amend the Constitution in order to allow expropriation without compensation.

Notwithstanding the South African Government's attempts to appease the international community by pretending that property rights are not being threatened, the facts prove the opposite:

- In December 2017, the ANC officially decided at its national congress to accept expropriation without compensation as party policy.
- On 27 February 2018, the South African National Assembly subsequently adopted a motion that the property rights clause in the South African Constitution has to be reviewed in order to allow the state to expropriate private property without compensation.
- On 27 March 2018, the South African newspaper, *City Press*, reported that Maite Nkoana-Mashabane, Minister of Rural Development and Land Reform, said Government would not wait until the Constitution has been amended, but that her department was preparing a test case to expropriate land without compensation. She also indicated that her department had already identified land they want to expropriate, but that she was not going to disclose the list of such properties, as that would warn the owners concerned to prepare for legal action. The Minister has never contested the content of this report - it is therefore accepted as a correct version of what she had said.

- On 31 July 2018, South African State President Cyril Ramaphosa made a late-night announcement on television to the effect that he and the ANC had decided to proceed with amending the South African Constitution to allow expropriation without compensation. President Ramaphosa's announcement to change the Constitution's provisions regarding property rights also violated his oath of office, as well as Section 83(b) of the Constitution, which stipulates that the President of South Africa must uphold, defend and respect the Constitution. This announcement was the tenth instance of President Ramaphosa publicly expressing his support for expropriation without compensation. This announcement was made while the South African Parliament's open-ended public participation process had not even been completed yet, thus reducing the public participation process to a farce.
- On 5 August 2018 another report in *City Press* indicated that the Department of Rural Development and Land Reform, on instruction of the ANC, had identified 139 farms for expropriation without compensation. Mr Zizi Kodwa, a member of the ANC's National Executive Committee, is cited extensively in this report. The report's content has not been contested by the ANC. On the same day, a South African newspaper, *The Sunday Times*, reported that according to the party's spokesperson, Ronald Lamola, the ANC had identified 139 farms that would serve as "expropriation targets".
- On 15 November 2018 Parliament's Joint Constitutional Review Committee adopted a report that recommends that the wording of Section 25 of the Constitution be changed to explicitly allow for expropriation without compensation. AfriForum is ready to challenge this decision in court, as a defective process had clearly been followed leading up to this step.

The ANC is attempting to sell its plans to the international community by saying that these plans will be executed legally and constitutionally, without land grabs taking place. If the Constitution is amended to allow expropriation without compensation, the ANC could argue that it is being done "constitutionally", but this certainly does not mean that it is right. It would amount to legalising the violation of property rights as a human right and a breach of the negotiated settlement of the 1990s. It also flies in the face of the internationally recognised right not to be deprived of property without fair compensation.

Contrary to what Government is professing to other countries and organisations, land grabs are indeed taking place in South Africa. According to an investigation by the South African Sunday newspaper, *Rapport*, there have been 263 land invasions in the Western Cape, 161 in Ekurhuleni and 1 470 in the Tshwane Metro area since January this year. Although these land invasions were not committed by the South African Government itself, it is happening on a continuous basis that the South African Police Service refuses to act against the people invading said land. For example, AfriForum recently obtained a court order to have a private security company remove land invaders from a farm owned by Doctor Motodi Maserumule, because the police had refused to act. This was done at great cost.

It is expected that running up to the South African general election in May 2019 the issue of land ownership and unrealistic undertakings to provide people with land will be used by parties

to mobilise support. Examples in this regard can already be seen. In the aftermath of the elections this could create an explosive situation when these expectations are not met. Once again scapegoating could be used to divert the attention from politicians' irresponsible undertakings.

AfriForum recognises the injustices concerning land ownership in the past, with legislation such as the 1913 Land Act and the 1950 Group Areas Act, and is in favour of efforts to give black South Africans increased access to land. The current restitution and land reform legislation already provides for this. However, according to former interim State President Kgalema Motlanthe's official investigation, this process has failed to date, not because of the Constitution's provisions regarding property rights, but because of large-scale corruption and the Government's lack of executive capacity. Since 1994, the South African Government has already spent more than R50 billion on land reform in South Africa, but has very little to show for it, mostly as a result of corruption. It is now attempting to cover up its failures in this regard by turning to radical policies such as expropriation without compensation.

The human rights of not only the present generation of landowners who legally purchased their property, but also of those who do not possess property, will be violated by expropriation without compensation, as has been proven in the case of other countries where the disregard for private property rights has caused economic chaos and consequently immense misery to the residents.

The way in which this process develops will impact overwhelmingly on the human rights of all of the peoples of South Africa and the future of democracy and the rule of law in our complex country. We therefore appeal for support against this proposed programme of expropriation without compensation.

Conclusion

AfriForum thanks the Forum for the opportunity to bring this matter to the attention of the international community.

We also applaud you for providing governments and NGOs with a platform where we can share ideas, voice concerns and learn from international best practices. May the activities of the Forum continue bringing about a better future.

With sincere appreciation

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