



Proposed Land Expropriation Would Ruin South African Economy

In 2014, the Institute of Race Relations (IRR) in South Africa warned that the ruling African National Congress (ANC) would seek to nationalize all of the country's land without compensation. The ANC would do so by taking "custodianship" of the land, then later claiming that no expropriation had occurred — thus no compensation was required. The IRR's warning was dismissed as "unwarranted" and "unlikely," and the group was accused of "scaremongering" by the ANC and various South African agricultural societies.



Shortly thereafter, the IRR's warning seemed to literally echo through South Africa as the ANC employed this very tactic to take hold of the country's mineral resources without compensation. At the time, two thirds of these resources were privately owned, yet by means of the Mineral and Petroleum Resources Development Act of 2002, they were vested to the "custodianship" of the ANC — which meant that the government wasn't liable for billions of rand in compensation.

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As a result, the latest collaboration between the ANC and the Economic Freedom Fighters party comes as no surprise to politically minded South Africans. It was inevitable they'd agree on a commitment to "state custodianship" over all land in the recent draft bill to amend Section 25 of the South African Constitution. The initial draft was aimed at incorporating the possibility that it might be "just and equitable" in some instances to pay no compensation for the expropriation of land:

(2)(b) ... a court may, where land and any improvements thereon are expropriated for the purposes of land reform, determine that the amount of compensation is nil.

(3A) National legislation must ... set out specific circumstances where a court may determine that the amount of compensation is nil.

However, the latest addition to the proposal is contained in a new subsection, 25(5), which reads as follows:

The state must take reasonable legislative and other measures, within its available



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resources, to foster conditions which enable state custodianship and for citizens to gain access to land on an equitable basis.

With this “custodianship” concept set to nationalize all land, South Africa’s vital agricultural sector is likely to become as poor an investment as its mining sector. And if this mechanism of “deprivation” has been effectively implemented in both the mining and agricultural sectors, what’s to stop the ANC from extending it to important pools of private capital, particularly with the inclusion of subsection 25(4), which defines “property” as “not limited to land”? The ANC would be legally permitted to take custodianship of all private medical savings for the proposed National Health Insurance Fund. Private pension funds could similarly be vested in the custodianship of the proposed National Security Fund. Equally as concerning is the prospect of private savings being vested into the custodianship of a new state bank for the funding of government infrastructure projects.

The Free Market Foundation (FMF) — an independent public benefit organization in South Africa — opposed the amendment on both principle and pragmatic grounds, stating that there are less damaging and restrictive alternatives available to the ANC that will not destroy remaining investor confidence. At a media briefing in May 2018, FMF director Temba Nolushungu was on record saying, “Expropriation without compensation is a betrayal of the struggle and the most ominous reversal on the road to true liberty for black South Africans since Apartheid. It will deny the rights for which black citizens fought and died.”

More recently, FMF legal policy head Martin van Staden commented,

The amendment’s consequences for the economy have been well documented and experienced around the world. Every society, particularly those of Zimbabwe and Venezuela, that has attempted expropriation without compensation, has not only seen the collapse of agriculture, but also the financial industry — as security for billions of bank loans disappear. All of those societies are now far poorer than they were when they started their dubious programmes of dispossession.

While Agri SA, a federation of agricultural organizations in South Africa, was initially one of the groups accusing the IRR of being “scaremongers,” chairman Willem de Chavonnes Vrugt cautioned that land custodianship without compensation would “give control of all private land to the state — which would be a recipe for an economic and humanitarian disaster, and an invitation to large-scale corruption.”

South Africa’s opposing political party, the Democratic Alliance (DA), has written to the UN Human Rights Council requesting that the outfit consider adopting a resolution calling on the South African government to honor its human-rights obligations under international law by refraining from pursuing processes that infringe on the property rights of South Africans. Article 17 of the Universal Declaration of Human Rights acknowledges the right to property as a moral right. The article states:

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.

South Africa is a signatory to the UN charter and is therefore bound by its provisions. The DA’s direct appeal to the UNHRC follows a letter to the National Cabinet, which received no response.



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The DA says that according to research by the Gordon Institute of Business Science, the economic effects of land expropriation will wipe off R270 billion (\$18.7 billion) from the country's GDP, and this will result in 2.3 million job losses. They also said that South Africa is likely to be kicked out of African Growth and Opportunity Act by the United States. The DA's Dr. Annelie Lotriet said President Cyril Ramaphosa's repeated claim that Section 25 can be amended without affecting the economy and food security is very misleading.



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